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FOURTH EDITION.

JOHN A. ROBERTS, JR.

Author.

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1893.







**ARCHBOLD'S**  
**SNOWDEN'S**  
**MAGISTRATES ASSISTANT,**  
  
**AND**  
  
**POLICE OFFICERS AND CONSTABLES GUIDE.**

**FOURTH EDITION.**

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**BY**  
**JOHN FREDERICK ARCHBOLD, Esq.**  
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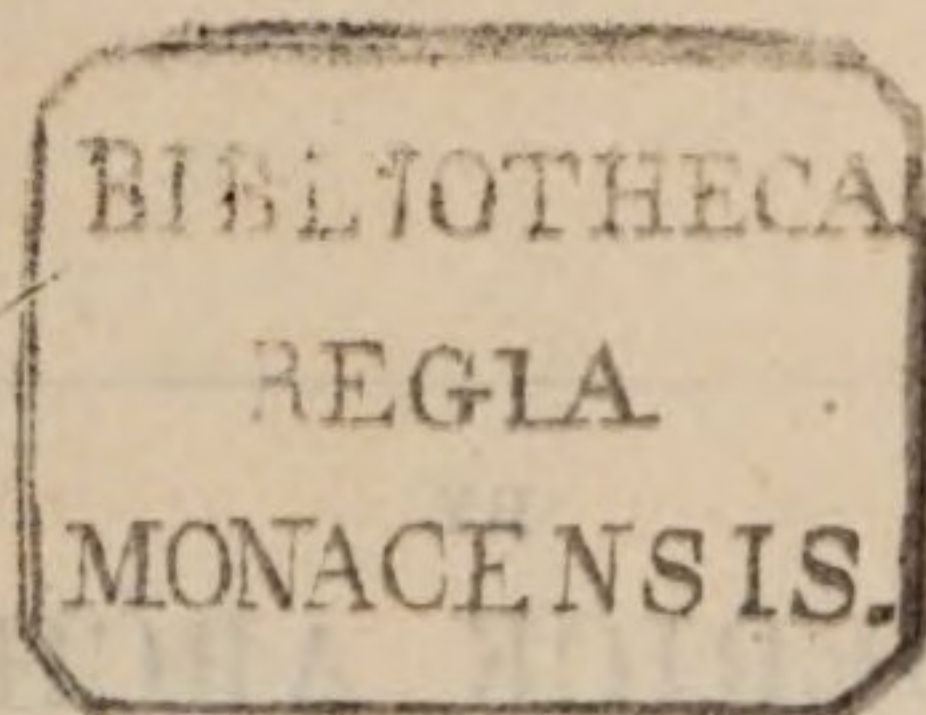
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**1859.**



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SHAW AND SONS, FETTER LANE.

1861



## ADVERTISEMENT

TO

### THE FOURTH EDITION.

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THE last edition of this work, a large one, sold in the short space of twelve months, which is a tolerably good test of its utility. It has been purchased largely by the County and Borough police throughout the Kingdom; and it is well calculated to render them as sharp and intelligent as officers, as the original writer of the work. To add to the utility of the work, I have introduced the following original matters into the present edition:—

1. The statement to be returned annually to the Secretary of State by the Justices of Counties, and the Watch Committees of Boroughs, giving the state of their police establishments,—the class of persons apprehended and proceeded against,—and the depredators, offenders, and suspected persons within the district of the police in the month of September, and the houses they frequent. *Post*, p. 55.

2. The Rules issued by the Secretary of State, in the present year as to the rates and scales of payment of costs, expenses, and compensations to prosecutors and witnesses, including constables. *Post*, p. 104.



3. The stat. 21 & 22 Vict. c. 73, as to stipendiary magistrates. *Post*, p. 141.
4. The stat. 20 & 21 Vict. c. 54, as to Frauds by Trustees, Bankers, and Bailees. *Post*, p. 298.
5. The stat. 16 & 17 Vict. c. 41, for making further provisions as to Common Lodging Houses *Post*, p. 344.
6. The stat. 21 & 22 Vict. c. 83, as to the search for, and seizure of, Obscene Books, Pictures, &c. *Post*, p. 350.
7. The stat. 20 & 21 Vict. c. 55, as to Reformatory Schools. *Post*, p. 369.
8. The stat. 20 & 21 Vict. c. 48, as to Schools for vagrant and destitute children. *Post*, p. 373.
9. The stat. 20 & 21 Vict. c. 43, as to special cases granted by Justices of the Peace. *Post*, p. 428.
10. The stat. 21 & 22 Vict. c. 68, amending the Law as to detached parts of Counties. *Post*, p. 432.
11. The stat. 20 & 21 Vict. c. 85, s. 21, for amending the Act for the protection of the property and earnings of a wife deserted by her husband. *Post*, p. 431.
12. The stat. 21 & 22 Vict. c. 108, ss. 8, 9, for amending this latter Act. *Post*, p. 436.

These useful additions to a very useful book, will I trust be acceptable to those for whose use this work is intended.

Temple, 1858.

J. F. A.



# ADVERTISEMENT

TO

## THE THIRD EDITION.

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To oblige my Publishers, Messrs. Shaw and Sons, I have edited this work. It is one of great merit and value, for the purposes for which it was intended. The writer of the work attained a comparatively high rank in the Constabulary Force by the perfect knowledge he had of its duties, and the prompt, active, and efficient manner in which he executed them. In this work he has imparted to all Constables and other Peace Officers the sum of his knowledge and great experience in these respects, in language plain, simple, and intelligible; he has stated what they may do, what they must do, and how to do it. And if they study it attentively, and avail themselves of its writer's great experience, and follow implicitly his directions, they will acquire for themselves the high character bestowed upon him by Magistrates who well understood, and could well and rightly appreciate the correct and most efficient manner in which he executed the duties of his office.

But it was not for Constables alone that the work was written. It is of great importance to Magistrates to be well acquainted with the duties of the officers who execute their orders, and the manner in which those duties should be performed. This work, as originally published, contained sufficient for this purpose; but in the Second Edition, to make the work more valuable to Magistrates,



the whole of the law relating to the duties of Justices of the Peace out of Quarter Sessions,—in respect of Indictable Offences, and as to Convictions and Orders, and other matters, as defined by statutes 11 & 12 Vict. cc. 42, 43, and 44, was added; and I have given in this Edition the proceedings against Juvenile Offenders, and the proceedings for Larceny at Petty Sessions where the party charged pleads guilty. The First Edition of the work was previous to the passing of the above Acts, and it contained much of the law, as it was then understood, relating to those duties of Magistrates. Such parts of the work, however, being now wholly altered, I have suppressed in the present Edition, as the subject is now regulated entirely by the above Acts; and allowing the former law to remain in the work was calculated to confuse the reader, and to conduce to error and uncertainty.

The work originally was carelessly arranged; it was difficult to find in it any particular subject without consulting the Index; in the present Edition I have altered this; I have given it a more logical arrangement, so that the reader now, by consulting even the Table of Contents, can find out at once any subject on which he wishes for information, with the greatest ease and certainty. I have added the recent County Constables' Act, and all the other Acts passed, and the cases decided, since the Second Edition was published, which relate to the subjects treated of in the work. I have not in any instance altered the language of the work, but have allowed the writer to speak in his own plain, simple manner, which will be found easily intelligible to all readers. In these respects I trust that I have done my duty as Editor of this Edition.

J. F. A.



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CONSTABLES.

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1. *Petty Constables.*

THE following is an epitome of the appointment of constables, under the late statute of 5 & 6 Vict. c. 109.

By this Statute the court leet constables are abolished, so far as they are concerned in the preservation of the peace; and the magistrates have the power of appointing absolutely the requisite number of constables in all cases where the constables were before appointed at the leet or tourn.



Court leet constables are entirely debarred from executing the precepts of justice in penal cases, arresting for felony, for breach of the peace, &c.

The justices of the peace are to hold special petty sessions in their divisions, for the purpose of appointing parochial constables, between the 24th day of March and the 9th of April, in every year, due notice thereof being given to every justice usually acting in that division.

By s. 2, the justices shall, within thirty days next after the passing of this Act, and within the first seven days of February in each following year, issue a precept under the hands of any two of them, to the overseers of each parish within the division, requiring them to make out and return, within eighty days next after the passing of this Act, and before the 24th day of March in each following year, a list in writing of a competent number of men within their respective parishes, qualified and liable to serve as constables, and also to perform all other requisitions in the said precept contained; and with the said precept shall be given notice to the said overseers of the time and place where such special session of the peace, as aforesaid, will be holden.

3. The overseers of every parish, upon the receipt of such precept, shall summon a meeting of the inhabitants in vestry, to be holden within fourteen days after the receipt of the said precept; and the vestry, at such meeting, shall make out a list in writing, of such number as shall be named in the precept, of men residing within their parish who shall be qualified and liable to serve as constables, with their Christian name and surname, and with the true place of abode, the title, quality, calling, or business of each, written at full length: provided also, that it shall be lawful for the vestry to annex to the said return the names of any number of men willing to serve the office of constable, and whom the vestry will recommend to be appointed, although not having the qualification hereinafter mentioned.

It is not very clear for what purpose those names are added. The persons so recommended can only act as substitutes, or as paid constables.

4. It shall be lawful for the justices, at a special petty session of the peace to be holden for that purpose, at any convenient time before the issuing of such precept as aforesaid (of which last-mentioned session due notice shall be given [by the clerk or clerks to the justices, 13 *Vict. c. 20, s. 4*] to every justice usually acting within the division), to make an order for uniting any parish or parishes, whenever they shall think it expedient, to any parish adjoining thereto, or for the annexing of any extra-parochial places to any parish adjoining thereto, for the purposes of this Act; and a copy of such order shall be served on the overseers of every parish so united, and also on the overseers of such adjoining parish, and every such extra-parochial place so annexed, with the precept hereinbefore mentioned; and every such parish, or extra-parochial place, so united to any adjoining parish, shall thenceforward be deemed, for all the purposes of this Act, to be a part of such adjoin-



ing parish ; and the inhabitants thereof shall be entitled to attend and vote at any meeting in vestry, for the purposes of this Act, of the inhabitants of the parish to which such parish is united, as fully as if they were inhabitants of the parish where such meeting is holden.

5. Every able-bodied man, resident within the said parish, between the age of twenty-five years and fifty-five years, rated to the relief of the poor, or to the county rate, on any tenements of the net yearly value of four pounds or upwards, except such persons as shall be exempt or disqualified, as hereinafter mentioned, shall be qualified and liable to serve as constable of that parish.

As to persons resident, that is determined by the constant and ordinary sleeping of a person in any particular place.

The mere occupation of land or premises in a parish for the purpose of trade, business, or pleasure, and even paying rates, is not sufficient to render a person liable who does not sleep there (*a*).

6. All peers ; all members returned to serve in the Commons house of parliament ; all judges of Her Majesty's courts of record at Westminster ; all justices of the peace ; all deputy lieutenants ; all clergymen in holy orders ; all priests of the Roman Catholic faith, who shall have duly taken and subscribed the oaths and declarations required by law ; all persons who shall teach or preach in any congregation of Protestant dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation, except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law ; all schoolmasters ; all serjeants and barristers-at-law actually practising ; all members of the society of doctors of law, and advocates of the civil law actually practising ; all attorneys, solicitors, and proctors, duly admitted in any court of law or equity, or of ecclesiastical or admiralty jurisdiction, in which attorneys, solicitors, and proctors have usually been admitted, actually practising and having duly taken out their annual certificates ; all conveyancers and special pleaders, below the bar ; all officers of any such courts actually exercising the duties of their respective offices ; all coroners, gaolers, and keepers of houses of correction ; all members and licentiates of the Royal College of Physicians in London actually practising ; all surgeons being members of one of the Royal Colleges in London, Edinburgh, or Dublin, and actually practising ; all apothecaries, having obtained a certificate to practise as an apothecary from the master, wardens, and Society of Apothecaries of the city of London, and actually practising ; all officers in Her Majesty's navy or army, on full pay ; all persons enrolled and serving in any corps of yeomanry, under officers having commissions from Her Majesty, or lieutenants of counties, or others specially authorized by Her Majesty for that purpose ; all pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy or light service, employed by either of those corporations ; and all pilots licensed by the lord warden of the cinque

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(*a*) See *R. v. Adlard*, 7 D. & R. 340, 4 B. & C. 772.



ports, or under any Act of Parliament or charter for the regulation of pilots in any other port; all the household servants of Her Majesty; all officers of customs and excise; all sheriffs and sheriff's officers; all high constables; the clerks of all boards of guardians of the poor, established under the Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales; the masters of all union workhouses; all county or district constables; all parish clerks; all registrars and superintendent registrars of births, deaths, and marriages; all churchwardens, overseers, and relieving officers, shall be freed and exempt from serving the office of constable under this Act.

All postmasters and persons employed in the business of the post-office, are exempt by stat. 13 Vict. c. 20, s. 5, *post*.

7. All licensed victuallers and persons licensed to deal in any excisable liquors, or to sell beer by retail; all gamekeepers; and all persons who have been attainted of any treason or felony, or convicted of any infamous crime, shall be disqualified from serving the office of constable under this Act.

8. The overseers of each parish shall make out true copies of the list so agreed to in vestry; and where any of the persons named in the said list shall have been chosen to serve, and shall have served the office of constable in the said parish, in person or by substitute, the overseers shall set against his name in the list the date of the year of such service, and shall on the three Sundays next before the day limited for making their return in this year, and on the first three Sundays in the month of March, in each following year, fix a true copy of such list upon the principal door of every church, chapel, and other public place of religious worship within their parish, having first subjoined to every such copy a notice, stating that all objections to the list will be heard by the justices of the peace, at a time and place to be mentioned in such notice, and having also signed their names at the foot of such copy: and shall likewise keep the original list, or a true copy thereof, to be perused by any of the inhabitants of their parish, at any reasonable time, during the three weeks next before the day limited for making their return in this year, and during the first three weeks of the month of March in each following year, without any fee or reward; and on or before the day limited for making their return, shall sign and return the original list to the justices, as required by the precept.

9. Every overseer who shall neglect or refuse to sign and return such list, or to make out, sign and publish such true copies as aforesaid, or who shall knowingly leave out the name of any person who ought to be included therein, or who shall knowingly make a false return of any particular which ought to be comprised therein, shall, upon conviction thereof before two justices of the peace, forfeit and pay, for every such offence, a sum not more than five pounds.

10. The overseers of each parish shall attend the special session of the peace, to be holden for the appointment of constables in their parish, and shall then and there verify the list so returned by them, and shall answer on oath such questions touching the same as shall be put to them, or any of them, by the justices then present; and if



any man not qualified and liable to serve as constable as aforesaid, is inserted in any such list, it shall be lawful for the said justices, upon being satisfied by the oath of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve as constable, to strike his name out of such list, and also to strike thereout the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness, or other infirmity of body, from serving as constable; and when every such list shall be duly corrected at such session, or at such adjournment thereof, it shall be allowed by the justices present, or two of them at such session, or at any adjournment thereof, who shall sign the same, with their allowance thereof.

11. When any list shall have been allowed, the justices shall choose from the allowed list the names of such number of persons as they shall deem necessary (having regard to the extent and population of the parish) to act as constables within the parish during the year then next following, and until other constables shall be chosen and sworn to act in their stead, as constables for such parish: provided always, that where any person shall have been chosen to serve, and shall have served, the office of constable, either in person or by substitute, as hereinafter provided, he shall not be liable to be again chosen until every other person in the parish, liable and qualified to serve, shall also have served the office of constable, either in person or by substitute.

It has been held that the election of constables, both paid and unpaid, under the provisions of 5 & 6 Vict. c. 109, is in the justices at special petty sessions, and not in the vestry, whose duty it is simply to make a list of parties qualified to serve those offices, and to return the same to the justices. Where, therefore, objections imputing perjury to a party returned in such list, were made before the justices: *Held*, that the occasion was privileged and justified *bonâ fide* objections, and that, in an action of slander, it was necessary for the plaintiff to prove express malice (a).

12. The justices shall cause the persons so chosen to be summoned to appear before them on a day to be fixed by such justices, and shall cause to be administered to every such person the following oath (that is to say),—

“I, *A. B.* of *C.*, do swear, that I will well and truly serve our sovereign lady the Queen, in the office of constable for the parish of *D.* [*or* parishes of *D. E.*, &c.] for the year now next following, or until another constable shall be sworn in my stead, according to the best of my skill and knowledge. So help me God.”

Provided always, that if any qualified person, chosen as aforesaid, shall be unwilling to serve the office of constable in person, and shall find a substitute, to be approved by the justices, and willing to serve for him, the person so chosen and unwilling to serve shall attend with his proposed substitute, at the time and place appointed for swearing in constables; and the justices, if they shall approve of such proposed substitute, shall cause the oath to be administered to him instead of the person so chosen and unwilling to serve; but the

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(a) *Kershaw v. Bailey*, 12 J. P. 663: 17 L. J., ex. 129.



service of any person as substitute for another person shall not be reckoned as his own service, so as to exempt him from being sooner chosen to serve in his own person than otherwise he would have been liable to.

It has been held that this statute does not in terms require any qualification in the substitute selected by a person chosen as constable to serve for him and approved of by the justices, and the court will not imply that any qualification is necessary. *Quo warranto* therefore does not lie against a substitute whose name has not been inserted in the list of persons qualified and liable to serve agreed to by the vestry, and returned to the justices under the 5 & 6 Vict. c. 109, s. 3 (a).

13. Every person qualified and liable to serve, and who shall be chosen by the justices to serve the office of constable, and shall be duly summoned to be sworn, and to take upon him the said office, and who shall refuse, or, without reasonable cause, to be allowed by the said justices, neglect to attend and to be sworn as constable, or to find a qualified substitute to be sworn in his stead, shall, upon conviction thereof before two justices, forfeit and pay any sum not more than ten pounds; and every person who, after being sworn as constable, shall wilfully neglect to act in the execution of his office, shall, upon conviction thereof before two justices, forfeit and pay for every such offence any sum not more than five pounds.

14. Within fourteen days after the appointment and swearing of such constables, the clerk to the justices shall send to every justice usually acting within the division, and also to the clerk of the peace, for the purpose of being laid before the next court of general or quarter sessions, a list containing the names of all constables so appointed in the division, and the parishes for which they have been appointed; and the overseers of the poor shall affix to the doors of their respective churches, a list of the names of the constables appointed in their respective parishes.

15. The said constables shall have within the whole county and also within all liberties, and franchises, and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities of a constable, within his constablewick, but shall not be bound to act as a constable beyond the parish for which they are severally appointed and sworn, without the special warrant of a justice of the peace: provided always, that in those counties in which any chief constable or superintendent shall have been appointed under the authority of an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for the Establishment of County and District Constables, by the Authority of Justices of the Peace," or of any Act passed for the amendment thereof, the constables appointed under this Act for any parish within the district for which such chief constable or superintendent shall have been appointed shall be subject to the authority of such chief constable or superintendent.

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(a) *In re Booth*, 12 J. P. 760; 18 L. J. *m.* 25.



16. In case of the death or disqualification of any constable, during his year of office, of which the overseers shall forthwith give notice to a justice of the peace usually acting for the division, or in case any person who shall have been chosen constable shall refuse or neglect, as aforesaid, to attend and be sworn, or to find a qualified substitute to be sworn in his stead, and shall have been fined for such refusal or neglect, the person who has last served and shall not then be disqualified or exempt, shall be bound to act in his stead until another constable shall be appointed and sworn to act for the remainder of the year, which shall be done at the next petty sessions of the peace for the division, of which notice shall be given to all the justices usually acting for the division; and in case the constable making the vacancy was serving as substitute for some other person, the justices shall summon the person originally chosen to attend and be sworn, or to find another substitute duly qualified to serve for the remainder of the year; or, if the person originally chosen shall be then disqualified, or shall have refused or neglected, as aforesaid, to attend and be sworn, or to find a substitute, or if the constable making the vacancy was serving, after having been chosen, and not as a substitute, the justices, at such session, shall choose another qualified person out of the allowed list then in force, to serve the office of constable during the remainder of the year, and shall proceed in all respects as in the original appointment of constables for that year, and the person so chosen shall be bound in like manner, and subject to the same penalty, to attend and be sworn, or to find a substitute to be sworn in his stead, to serve for the remainder of the year; and if less than two hundred days shall have elapsed since the first appointment of constables for that year, but not otherwise, the service of the person appointed to act for the remainder of the year shall be reckoned to him as service for that year; and in the first year after the passing of this Act the justices, at the time of first choosing constables, shall also choose substitutes to serve, in case of vacancies during the year of office, until another appointment shall be made.

The provisions of this section apply, since the 13 Vict. c. 20, to the discharge of any constable which shall take place under the powers of the 5 & 6 Vict. c. 109 (a).

17. The justices of the county, in general or quarter session assembled, shall, from time to time, subject to the approval of one of Her Majesty's principal secretaries of state, settle tables of fees and allowances to the clerks to the justices, for the performance of their duties, under this Act, and to the constables for the service of summons and execution of warrants, and for the performance of such other occasional duties which may be required of the said constables, for which the said justices shall think that fees ought to be allowed; and whenever any duty for which any such fee or allowance shall have been settled, and for which the payment is not by law charged upon the county rates, shall have been performed by any clerk, or by any constable appointed under this Act, the amount of the fee or allowance shall be paid by the overseers of the parish in respect of which such fee has become payable, out of any monies in their hands

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(a) 13 Vict. c. 20, s. 1, *post*.



collected for the relief of the poor, upon the order of the justices in petty session assembled for the division, and under such regulations as shall be made from time to time by the justices in general or quarter session assembled, subject to the approval of the secretary of state.

This is now extended to the execution of any order of a justice, made in writing, and to the performance of any occasional duties (a). With respect to the fees of clerks to justices, the case of *Wray v. Chapman*, 14 J. P. 95, though raised by other statutes, is very important.

18. It shall be lawful for the vestry assembled for the purpose of making such return as aforesaid, to resolve that one or more paid constables shall be appointed for their parish; and if the vestry shall so resolve, a copy of the resolution and of the amount of salary which the vestry shall resolve on paying to such constable or constables, shall be sent by the overseers to the justices, with the return hereinbefore mentioned.

A writ of *certiorari* to bring up a resolution under this section does not lie (b).

19. The justices, at the session of the peace holden for the appointment of constables, upon receiving from any parish a copy of any such resolution as aforesaid, if they shall be satisfied with the amount of salary agreed to be paid, shall appoint so many paid constables to act for that parish as shall be agreed to by the resolution; or if the same resolutions shall have been agreed to by more parishes than one adjoining each other, may, if they shall think fit, appoint the same paid constables to act conjointly for all such last-mentioned parishes; and in every parish in which a paid constable shall be appointed under this Act, the justices, if they shall think fit, need not appoint any unpaid constable, or may appoint a smaller number of unpaid constables than they had otherwise resolved on appointing for that parish; and every paid constable shall hold his appointment until he shall resign or be dismissed for misconduct by the justices of the division in petty session assembled, or until the vestry shall rescind the resolution for his appointment, at any meeting of vestry holden for making such return as aforesaid.

In case of the death or resignation, or dismissal for misconduct of any paid constable, the justices may, since the 13 Vict. c. 20, s. 3 (*post*), fill up the vacancy. The writ of *certiorari* will lie to bring up the appointment (b).

The appointment should be in writing, and should be stamped (c).

20. The amount of the salary to every such paid constables shall be paid by the overseers out of any monies in their hands collected for the relief of the poor.

21. After the passing of this Act, no petty constable, headborough, borsholder, tithingman, or peace-officer of the like description, under any name of office, shall be appointed for any parish, township, or vill, within the limits of this Act, except for the performance of duties unconnected with the preservation of the peace or with the execution

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(a) 13 Vict. c. 20, s. 2, *post*.

(b) *In re the Constables of Hipperholme cum Brighthouse*, 11 J. P. 48.

(c) *R v. Lew*, 8 B. & C. 655.



of this Act, at any court leet or tourn, or otherwise than under the provisions of this Act, or under the provisions of the said Act of the third year of the reign of her present Majesty, or of some Act passed for the amendment thereof; but nothing herein contained shall be taken to prevent the appointment of special constables, or to apply to the city of London, or the metropolitan police district, or to any borough which is within the provisions of an Act passed in the sixth year of the reign of His late Majesty, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or of any charter granted in pursuance of that Act, or of any Act made for the amendment thereof, or to any parish, town, or place in which rates are or shall be levied for the payment of constables, under the provisions of an Act passed in the fourth year of the reign of His late Majesty, making provision for the lighting and watching of parishes in England and Wales, or of any local Act, specially applying to such parish, town, or place, and that nothing hereinbefore contained shall be taken to apply to the county palatine of Chester.

22. It shall be lawful for the deputy justices of the peace of any county, in general or quarter sessions assembled, if they shall think fit, to order that lock-up houses, for the temporary confinement of persons taken into custody by any constable and not yet committed for trial, or in execution of any sentence, shall be provided in such places within their county as the said justices shall think fit; and for that purpose to purchase and hold lands and tenements, or to appropriate to that purpose any lands and tenements belonging to the county, which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; or, instead of providing new lock-up houses, to order that the lock-up houses, strong-rooms, or cages belonging to any parish, be appropriated for the purposes of this Act, and if necessary, be enlarged or improved; and the expense of building, hiring, or otherwise providing, repairing, and furnishing such lock-up houses shall be defrayed out of the county rates: provided always, that notice of the day and hour at which any business relating to providing, enlarging, or improving, any such lock-up houses will begin at such session shall be given by the clerk of the peace, with the notice of holding the session, on the requisition of any five justices acting for such county; and that no such lock-up house shall be built or otherwise provided, enlarged, or improved, except upon such plan as shall be approved by one of Her Majesty's principal secretaries of state: provided also, that every such lock-up house shall be within the inspection of the inspectors of prisons.

24. All penalties herein made payable, on conviction of any offender before two justices of the peace, may be levied, in case of non-payment thereof, with the costs and charges attending such conviction, by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of any justice of the peace of the county, riding or place wherein such conviction shall have taken place, with the reasonable costs of such distress and sale; and the overplus, if any, shall be returned to the party whose goods and chattels shall have been distrained.

See stat. 11 & 12 Vict. c. 43, *post*, under the title, "*Conviction*."



25. All penalties levied under this Act shall be applied in aid of the poor rates of the parish in which the offence shall have been committed for which such penalties shall be levied.

26. In this Act the word "county" shall be taken to extend to every riding or division of a county for which there is a separate court of general or quarter sessions of peace; and the word "parish" shall be taken to extend to every township or other district maintaining its own poor, and also to every extra-parochial place which shall not be annexed to an adjoining parish, for which places the justices in petty sessions assembled shall be empowered to appoint persons to act as overseers; and the word "overseers" shall be taken to extend to all persons charged with collecting rates for the relief of the poor in any parish, and in extra-parochial places not added to any adjoining parish, to the persons appointed by the justices as aforesaid.

27. This Act may be amended or repealed by any Act to be passed in this session of parliament.

Sect. 5 of this statute states that every able-bodied man between the ages of twenty-five and fifty-five is liable, if rated at 4*l.* or upwards, to the relief of the poor. "Able-bodied" must be taken to mean, free from permanent or long-enduring bodily infirmity.

By sect. 10, the magistrates have the power to strike out the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness, or other infirmity of body; and as a constable is, from the nature of his office, frequently called upon to exercise a sound discretion in sudden emergencies, and to exert his bodily strength for the suppression of violence or the capture of offenders—

It is therefore fit and necessary, that no person should be appointed to the office who is manifestly deficient in sense and knowledge, or physical power.

He ought to be of the ablest sort of parishioners, and if a very ignorant or poor person, incapacitated by weakness or confirmed illness, be chosen, he may be lawfully discharged, and a more able person appointed in his room.

By the 7th and 8th Vict. c. 52, s. 3, no toll shall be demanded or taken on any turnpike road or bridge, for any horse or police van, carriage or cart, passing along such road or bridge, in the service of a superintendent constable appointed under the provisions of the said Act, provided that the superintendent constable in charge of such horse, van, carriage, or cart, shall produce a certificate of his appointment, signed by the clerk of the peace of the county for which he shall have been so appointed, or shall have his dress according to the regulations of the said county at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall, for every such offence, be liable to a penalty not exceeding five pounds; and in all such cases the proof of exemption shall be upon the person claiming the same.

Sect. 4. By the said Act it is provided that nothing herein contained shall apply to certain boroughs and places therein specified: And whereas doubts have been entertained as to the powers of the justices to appoint constables for any parish of which part shall be within and part without such exempted borough or place; be it declared and



enacted, that with respect to any such parish the exemptions provided by the said Act shall be deemed only to exempt the men residing within that part of the parish which is within such exempted borough or place, from serving as constables under the said Act, or being included in any list to be made out under the said Act, and to disqualify the inhabitants of such part from voting in any division of the vestry under the said Act.

*Deputy Constables or Substitutes.*] Inasmuch as the office is wholly ministerial, and no way judicial, it seems that a constable may, at common law, appoint a deputy to execute a warrant directed to him, when, by reason of sickness, absence or otherwise, he cannot do it himself; yet it doth not seem to be settled that a constable can make a deputy without some special cause (a).

In *R. v. The Inhabitants of Hope Mansell*, *Cald.* 252, it was considered that a constable could appoint a deputy, and in *R. v. Clarke*, 1 *T. R.* 682, it seemed to be admitted as a settled point that a constable may appoint a deputy.

The deputy, when appointed, has all the privileges of the constable himself (b).

13 Vict. c. 20.—*An Act to amend the last-mentioned Act, 5 & 6 Vict. c. 109.*

Sect. 1. Recites that an Act for the appointment and payment of parish constables was passed in the fifth and sixth years of Her present Majesty, and it is desirable to amend the same: and enacts, That the provisions in the said recited Act, made in case of vacancy by death or disqualification of any constable during his year of office, shall be extended to the discharge of any constable which shall take place under the powers of the said recited Act.

2. It is by the said recited Act enacted, that certain fees and allowances, to be settled by justices in general or quarter sessions assembled, shall be paid to constables for the service of summonses and execution of warrants: and enacts, that the said fees and allowances so settled by the justices in general or quarter sessions, and approved by a secretary of state, as in the said recited Act is required, shall in like manner be paid to the said constables for the execution of any order of a justice made in writing, or for the performance of any occasional duties, the same being sanctioned and allowed by justices in petty sessions assembled.

3. In case of the death, or resignation, or dismissal for misconduct of any paid constable at any time, it shall be lawful for the justices of the division in petty sessions assembled, forthwith to appoint another paid constable, from and out of the list of constables allowed by the said justices at the special sessions last holden for the appointment of constables, at the same rate of salary as has been agreed by the vestry in the manner required by the said recited Act to be given to paid constables.

4. Recites that it is by the said recited Act enacted, that due notice shall be given to justices to hold special sessions for the

(a) 2 Hawk. c. 10, s. 36; Ch. Burn, vol. 1, p. 895, ed. 1845.

(b) Hawk, c. 10, s. 36, Dalt. c. 1.



appointment of parochial constables, but it is not stated by whom such notice shall be given : and enacts, that such notice shall be given by the clerk or clerks to the said justices.

5. Recites that it is by the said recited Act enacted, that certain persons therein named shall be freed and exempt from serving the office of constable under the said Act : and enacts, that the said exemption shall extend to all postmasters and persons employed in the business of the post office.

6. It shall be lawful for the justices of the peace of any county in general or quarter session assembled, to appoint a superintending constable for each or any petty sessional division within the said county, who shall have all the powers and immunities of a parish constable under the said recited Act, and shall have the superintendence of all the parish constables appointed in such parishes as shall be ordered by the said justices, and under such regulations as they shall make, and shall perform such duties as the said justices shall require of him ; and whenever the justices assembled as aforesaid, shall have provided a lock-up house, under the said recited Act, they shall also appoint a constable to have the charge thereof, who shall also have all the powers and immunities of a parish constable under the said recited Act ; and every superintending constable, and constable so appointed to the charge of a lock-up house, shall be entitled to hold his office until dismissed by the justices in general or quarter sessions assembled, and shall receive such salary and allowances out of the county rates as the justices assembled as aforesaid, shall order : provided always, that notice of the day at which any business relating to the appointment or dismissal, or to the fixing or ordering of the salary and allowances, of any such constable shall begin at such general or quarter session shall be given by the clerk of the peace.

7. Nothing herein contained shall be taken to prevent the appointment of special constables, or to apply to the city of London or the metropolitan police district, or to any borough which is within the provisions of an Act passed in the sixth year of the reign of His late Majesty, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or of any charter granted in pursuance of that Act or of any Act made for the amendment thereof, or to any parish, town, or place in which rates are or shall be levied for the payment of constables under the provisions of an Act passed in the fourth year of the reign of His late Majesty, making provision for the lighting and watching of parishes in England and Wales, or of any local Act specially applying to such parish, town, or place ; and that nothing hereinbefore contained shall be taken to apply to the county palatine of Chester.

8. For the purposes of exempting the metropolitan police district as hereinbefore provided, the justices in general or quarter sessions assembled shall, in each year, at the time of making up their accounts for the year, ascertain what proportion any expenses that have been incurred during the preceding year under this or the said recited Act shall bear to the gross amount of the county rate expended within the same period, and also what proportion of the said county rate has been levied within the metropolitan police district, and shall



repay to each parish within the said metropolitan police district such proportion of the sums so levied as they shall ascertain to be a like proportion to the sums expended under this Act out of the county rate.

9. This Act may be amended or repealed by any Act to be passed in this session of parliament.

By stat. 11 & 12 Vict. c. 101—*An Act to provide Lock-up Houses on the Borders of Counties*—The first section recites the 5 & 6 Vict. c. 109, s. 23, at length, and enacts, that it shall be lawful for the justices of the peace in and for any county, and for the mayor, aldermen and burgesses of any borough (having a separate commission of the peace), to agree with the justices of the peace of any one or more county or counties, or with the mayor, aldermen and burgesses of any one or more such borough or boroughs, that a lock-up house shall be erected, hired, or otherwise provided at some place or places on or near any common boundary, or in any other situation convenient for the purpose aforesaid, or that a lock-up house for any county or borough, or any lock-up house, strong room, or cage which might have been appropriated for a county under the said Act, and which shall be in a situation convenient for the purposes aforesaid, shall be appropriated, and, if necessary, enlarged or improved for such purposes accordingly, and that the same shall be so provided or appropriated, enlarged, and improved, and shall be from time to time repaired and furnished, and a superintendent constable appointed and paid for taking charge thereof, at the joint expense of the counties and boroughs, by the justices and mayor, aldermen, and burgesses of which respectively such agreement shall be made, in such manner and proportions as in the said agreement shall be specified: provided always, that no such lock-up house shall be erected, hired, provided, appropriated, enlarged, or improved, except upon such plan as shall be approved by one of Her Majesty's secretaries of state: provided also, that every such lock-up house shall be subject to the inspection of the inspectors of prisons.

Sect. 5, that so far as respects the power to detain therein and remand thereto, and to convey thereto and therefrom, persons taken into custody, every such lock-up house shall be deemed a lock-up house in and for each of the counties and boroughs for the joint use of which the same shall be provided, and all justices, constables, and others, shall have authority accordingly.

Sect. 6, that every superintendent constable so appointed as aforesaid to take charge of such lock-up house as aforesaid, shall be entitled to hold his office during good behaviour, or until he shall be dismissed therefrom by the orders of such justices and council, or otherwise, as by such agreement may be provided, and shall be paid such salary, and in such manner, and at such times, and in such proportions, out of the county, borough, or other rates, as shall be provided by such agreement; and every such superintending constable shall have all the powers and immunities of a parish constable under the said recited Act, and shall have the superintendence of all the parish constables appointed in such parishes as shall be specified in the said agreement, and under such regulations as shall be therein provided.



*2. Constables in Boroughs.*

The Municipal Corporation Act (5 & 6 Will. 4, c. 76,) contains special provisions for the appointment and management of constables in and for boroughs and the neighbourhood.

The following is a summary of the material enactments of the statute in reference to borough constables:—

Sect. 76. A watch committee to be appointed, to consist of the mayor and councilmen, and such committee to appoint constables to act for the borough and the county wherein it lies, and any other county within seven miles, &c. Nature of the office as to powers, duties, and responsibilities.

77. Watch committee to make regulations for the management of the constables, and as to suspension and dismissal.

78. Power to apprehend disorderly persons, suspicious persons, &c.

79. Constables attending at the watch-house in the night may take bail by recognizance from persons brought before them for petty misdemeanors, conditioned for appearance before a magistrate, and as to forfeiture of recognizance by non-appearance, postponing the hearing before the magistrate, &c.

80. Penalty on constable neglecting duty and dismissal.

81. Punishment of persons resisting or assaulting constable.

82. Regulation and payment of salaries, allowances, &c.; reward for extra exertion, injury, &c.

83. Appointment and payment of special constables in boroughs.

86. The watch committee to transmit a report of the number of police, their arms, and pay, &c., quarterly to the secretary of state, and also a copy of their rules, &c.

100. Council to provide a police office.

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Sect. 76. The council to be elected for any borough shall, from time to time as they shall deem expedient, appoint, for such time as they may think proper, a sufficient number of their own body, who, together with the mayor of the borough, shall be called the watch committee for such borough; and all the powers of such committee may be executed by the majority present at any meeting of the committee, the whole number present not being less than three; and such watch committee shall, from time to time, as occasion shall require, appoint a sufficient number of fit men who shall be sworn in before some justice of the peace having jurisdiction within the borough to act as constables for preserving the peace by day and by night, and preventing robberies and other felonies, and apprehending offenders against the peace; and the men so sworn shall, not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable duly appointed has within his constablewick by virtue of the common or statute law of this realm, and shall obey all such lawful commands as they may receive from any of the justices of the peace



having jurisdiction within such borough, or within any county in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

77. The watch committee may from time to time frame such regulations as they shall deem expedient for preventing neglect or abuse, and for rendering such constables efficient in the discharge of their duties; and the said committee, or any two justices of the peace having jurisdiction within the borough, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty, or otherwise unfit for the same; and when any man shall be so dismissed, or cease to belong to the said constabulary force, all powers vested in him as a constable, by virtue of this Act, shall immediately cease; and no man so dismissed as aforesaid, shall be re-appointed without the consent of two of the justices of the peace having jurisdiction within the borough.

78. That it shall be lawful for any constable, during the time of his being on duty, to apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony, and to deliver any person so apprehended into the custody of the constable appointed under this Act, who shall be in attendance at the nearest watch-house, in order that such person may be secured, until he can be brought before a justice of the peace, to be dealt with according to law, or may give bail for his appearance before a justice of the peace, if the constable shall think fit to take bail, in the manner hereinafter mentioned.

79. That where any person charged with any petty misdemeanor shall be brought, without the warrant of a justice of the peace, into the custody of any constable appointed under this Act, during his attendance in the night-time at any watch-house within any such borough as aforesaid, it shall be lawful for such constable, if he shall think fit, to take bail by recognizance, without any fee or reward, from such person, conditioned that such person shall appear for examination within two days, before a justice of the peace within the borough, at some time and place to be specified in the recognizance; and every recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before a justice of the peace; and the constable shall enter in a book, to be kept for that purpose in every watch-house, the names, residence, and occupation of the party, and his surety or sureties, if any, entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place, when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace for the borough, or for the county in which such borough is situate, in those boroughs for which there shall be no separate, general, or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party



has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every such recognizance as of recognizances forfeited in the sessions of the peace; and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint; and when the matter shall be heard and determined either by the dismissal of the complaint, or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward.

80. That if any constable of any borough shall be guilty of any neglect of duty, or of any disobedience of any lawful order, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence, be liable to be imprisoned for any time not exceeding ten days, or to be fined in any sum not exceeding forty shillings, or to be dismissed from his office, as such justices shall in their discretion think meet.

81. That if any person shall assault or resist any constable of any borough in the execution of his duty, or shall aid or incite any person so to assault or resist, every such offender, being convicted thereof before any two justices of the peace, shall, for every such offence, forfeit any pay such sums not exceeding five pounds, as the said justices shall deem meet: provided always, that nothing herein contained, shall prevent any prosecution by way of indictment against any person so offending, but so as that such person shall not be prosecuted by indictment, and also proceeded against under this Act for the same offence.

82. That the treasurer of every borough shall pay to the constables of such boroughs, such salaries, wages, and allowances, and at such periods as the watch committee for such borough shall, subject to the approbation of the council, direct; and the council shall order to be paid also any extraordinary expenses which such person shall appear to have necessarily incurred in apprehending offenders, and executing the orders of any justice of the peace having jurisdiction within such borough, such expenses having been first examined and approved by such justice; and the said treasurer shall also pay such further sums as the watch committee shall, subject to the approbation of the council, award to any of the persons belonging to the said constabulary force as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service, and all other charges and expenses which the watch committee shall, subject to the approbation of the council, direct to be paid for the purposes of the constabulary force under this Act.

83. That any two or more of the justices of the peace, having jurisdiction within any borough, are hereby authorized and required in the month of October in every year, to nominate and appoint by precept in writing, under their hands, so many as they shall think fit of the inhabitants of such borough (not legally exempt from serving



the office of constable) to act as special constables within such borough whensoever they shall be required by any warrant of any of the justices of the peace having jurisdiction within such borough so to act, and not otherwise; and every such warrant shall recite, that in the opinion of the justice granting the same, the ordinary police force of the borough is insufficient at that time to maintain the peace of the borough; and every person so appointed a special constable shall take the oath set forth in the Act 1 & 2 W. 4, and shall have the powers and immunities, and be liable to the duties and penalties enacted by that Act: and every person so appointed a special constable shall receive, out of the borough fund, for every day during which he shall be called out to act as such, the sum of three shillings and sixpence, and no more (a).

86. That the watch committee of every such borough shall, on the first day of January, the first day of April, the first day of July, and the first day of October in every year, transmit to one of His Majesty's principal secretaries of state a report of the number of men appointed to act as constables or policemen in such borough, and of the description of arms, accoutrements, and clothing, and other necessities furnished to each man, and of the salaries, wages, and allowances payable to such constables or policemen, and of the number and situation of all station-houses in such borough; and also a copy of all rules, orders, and regulations which shall from time to time be made by such watch committee, or by the council of such borough, for the regulation of such constables or policemen.

100. That the council of every borough to which a separate commission of the peace shall be granted under the provisions of this Act, shall be authorized and required to provide and furnish one or more fit and suitable office or offices, to be called "The Police Office" or "Offices" of the borough, for the purpose of transacting the business of the justices of such borough, and to pay from time to time out of the borough fund such sums as may be necessary for providing, upholding, and furnishing, and for the necessary expenses of such police office or offices; provided that no room in any house licensed as a victualling-house or alehouse shall be used for the purpose of any such police office (b).

11 Vict. c. 14.—*An Act for authorizing a Borough Police Superannuation Fund.*

Sect. 1. *Councils of boroughs may establish police superannuation funds.*—Recites "That an Act was passed in the sixth year of the reign of His late Majesty, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' whereby the council to be elected for any borough within the provisions of the said Act was directed to appoint a watch committee, and such committee was directed to appoint from time to time, as occasion should require, a sufficient number of fit men to act as constables for preserving the peace by day and by night, which constables are usually called the police force of such borough; and the said watch committee was thereby authorized to frame regulations

(a) See *R. v. Hulton*, 13 J. P. 328.

(b) See stat. 12 & 13 Vict. c. 18, s. 1; and see stat. 19 & 20 Vict. c. 69, *post*, p. 44



for rendering such constables efficient in the discharge of their duties; and the treasurer of each borough was thereby directed to pay to such constables such salaries, wages and allowances as such watch committee, with the approbation of the council, should order to be paid, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as should be disabled by bodily injury received, or be worn out by length of service:” and that “it might tend to the encouragement of such constables to continue in such service, and to behave themselves in an orderly manner, if the council were enabled to establish a superannuation fund in each borough, from which fund each police constable, on the events hereafter mentioned, shall be entitled to have and receive the allowance hereinafter mentioned, independently of any payment that may be awarded to him under the provisions of the Act above mentioned;” and enacts “that it shall be lawful for the town council of any borough within the provisions of the said Act, or subsequently incorporated, if it see fit, to declare that a police superannuation fund shall be established in such borough, and thereupon such police superannuation fund shall be established accordingly, and the provisions of this Act shall thenceforth be in full force and effect.”

2. *Superannuation funds to be supported by contributions of the police force, &c. ; and to be kept separate from the borough fund.—Rates of superannuation or retiring allowances.—If constable has served in different ranks, rate of superannuation to be regulated accordingly.*] “That there shall be thenceforth deducted from the pay of every constable belonging to the police force of such borough, either as superintendent or head officer of the police, or as inspector, acting inspector, serjeant, or private constable, or clerk, a weekly sum, as nearly as may be equal to one thirty-sixth part of his weekly pay and emolument (clothing excepted,) which said sums shall be so deducted from every constable holding any such office, rank, or situation respectively, by whatever name or title they may respectively be denominated in such force; which sums so deducted, and also all monies accruing from fines imposed on any of the constables for misconduct, and all monies arising from the sale of worn or cast off clothing supplied for the use of the police, and all monies paid for the service of summons or orders and execution of warrants by the police, shall from time to time be paid into a separate fund of such borough, to be called the ‘police superannuation fund;’ and such fund, and the accounts thereof, shall be kept separate from the borough fund, but shall be in all respects managed and audited like the other funds of such borough, and shall be from time to time applied in payment of such superannuation or retiring allowances to police constables as hereinafter mentioned; (that is to say) if he shall have served as police constable in the said police force for fifteen years successively as a private police constable, or as serjeant or inspector, acting inspector, superintendent, or head officer, or any or all of those ranks, he shall be entitled then to retire on a yearly superannuation allowance of an amount equal to half his full pay; but if he shall then be able and willing to continue to serve as a police constable, and the watch committee shall consent thereto, he shall then receive his full pay as a constable from the borough



fund, and also one third, but no more, of the above-named allowance from the superannuation fund; and when he shall have served as aforesaid for twenty years, he shall be entitled to retire on a yearly pension equal to two-thirds of his full pay; but if he shall then be able and willing still to serve as a police constable, and the watch committee shall consent thereto, he shall then receive his full pay as a constable from the borough fund, and also one third part, and no more, of the said last-named allowance from the superannuation fund; and if at any time any police constable so entitled to a retiring pension, but receiving a reduced pension, while continuing to serve as a constable, shall retire from the police force, he shall thenceforth receive the full pension he would have been entitled to receive had he not continued so to serve: provided always, that if any police constable who shall have served the necessary period before superannuation shall have so served in different ranks or capacities, his superannuation allowance shall be granted to him for a like number of years respectively in which he served in such several ranks or capacities, according to the rate of pay of each of the said several ranks or capacities."

3. *No constable to be superannuated under 50, unless unfit for service.*] "That no police constable shall be entitled to be superannuated who is under fifty years of age, unless he be reported, in writing, by the surgeon to the police force, to be unfit for further service in the force from infirmity of body or mind."

4. *Cases in which superannuation may be ordered by the watch committee, upon certificate of the police surgeon.*] "That if any party shall have served with diligence and fidelity in the police force for ten years successively, and from injury received in the service, or from infirmity of mind or body, shall become incapable of discharging the duties of his office, and such last-named circumstance shall be certified by the police surgeon for the time being, thereupon it shall be lawful for the watch committee to order such constable to be superannuated, and to receive out of the police superannuation fund any superannuation allowance which such watch committee shall see fit to order, not exceeding half his full pay as before mentioned."

5. *Constables dismissed or retiring to forfeit all claim, but if restored may have time of former service allowed.*] "That nothing herein contained shall be so construed as to prevent the dismissal of any police constable, who shall thereupon, or upon his retiring from the said police force, forfeit all claim upon the superannuation fund; but if restored to the said police force, the watch committee may, if it see fit, at any time make an order enabling him to have the time of his former service reckoned in as time served in respect of superannuation, and thereupon it shall be so reckoned accordingly."

6. *Monies paid to superannuation fund to be employed in aid of borough fund, which shall be answerable for the amount, with interest. Power to town council to invest monies in government securities; and also to re-sell and re-place the same in borough fund.*] —"That until the town council of such borough shall otherwise direct, the monies belonging to such superannuation fund shall be paid over to the treasurer of the borough, and employed in aid of the borough fund, and such borough fund shall be liable and answer-



able for the amount thereof and of every part thereof, when and as the same shall become liable under the provisions thereof, and for all accumulations and interest thereon, after the yearly rate of five pounds in the hundred pounds; and a separate account shall nevertheless continue to be kept and audited, and a debtor and creditor account kept, of all receipts and payments made as between the borough fund and police superannuation fund: provided always, that it shall be lawful for the town council to order the same or any part thereof to be invested in government stock or real security in the name of 'the treasurer of the borough of [here insert the name of the borough] for the time being;' and immediately upon such investment, so long as the same shall remain so invested, the borough fund shall cease to be liable for the monies so invested, or any interest thereon, but the dividends on such stock shall from time to time be received by such treasurer, and shall be by him carried to the credit of such superannuation fund; and it shall be lawful for the said council at any time to order the said treasurer to re-sell such funds, and place the produce thereof again in the borough fund, subject to the like rule as before mentioned."

7. *Provisions of this Act, if town council see fit, to apply to existing superannuation funds.*] "That it shall be lawful for the town council of any borough, if it see fit, to declare that any superannuation fund heretofore established in the police force of such borough shall, after the passing of this Act, be deemed to be, and the same shall thereupon be, a superannuation fund under this Act, and shall thereafter be in all respects regulated according to the provisions thereof."

8. *If fund shall be exhausted, town council may advance money on account thereof; but if town council decline to advance, superannuation payments to be reduced pro rata.*] "That in case the superannuation fund shall become exhausted, it shall be lawful for the town council, if it see fit, to cause money to be advanced on account thereof out of the borough fund by the treasurer, who shall thereupon receive the funds coming to such superannuation fund from time to time on account of the borough fund, till such advances shall have been paid off; but if the town council shall decline to make any such advance, then the respective payments to all parties entitled to superannuation from the said fund shall be reduced *pro rata*, during such time as the said fund shall be insufficient to pay the whole of the superannuation chargeable thereon in full; but the amount of such reductions shall nevertheless be a charge on the said fund, payable whenever afterwards the said fund shall be capable of paying the total amount thereof to all the said parties whose superannuations shall have been so reduced."

### 3. County Constables.

*By stat. 2 & 3 Vict. c. 93,—An Act for the establishment of County and District constables by the authority of Justices of the Peace, it is enacted:—*

Sect. 1. *Justices in quarter sessions may report to the secretary of state the necessity of an additional appointment of constables.—*



*Limitation of numbers.*] Whereas, by an Act passed in the second year of the reign of His late Majesty, intituled "An Act for amending the Laws relative to the appointment of Special Constables, and for the better preservation of the Peace," it is amongst other things enacted, that in all cases where it should be made to appear to any two or more justices of the peace of any county, riding, or division, having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony had taken place, or might be reasonably apprehended in any parish, township, or place situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the protection of the inhabitants, and the security of the property in any such parish, township, or place as aforesaid, then and in every such case such justices, or any two or more justices acting for the same division or limits, are thereby authorized to nominate and appoint, by precept in writing under their hands, so many as they should think fit of the householders or other persons (not legally exempt from serving the office of constable) residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, to act as special constables for such time and in such manner as to the said justices respectively should seem fit and necessary for the preservation of the public peace, and for the protection of the inhabitants, and the security of the property in such parish, township, or place; and whereas the powers of justices of the peace for making such appointments as aforesaid were enlarged by an Act passed in the sixth year of the same reign, intituled "An Act for enlarging the powers of magistrates in the appointment of special constables;" and whereas, it is expedient that the powers of the said justices for appointing constables be further enlarged: and that powers be given for charging the expenses of paying such constables upon the several divisions in which they shall be appointed: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases where it shall be made to appear to the justices of the peace of any county in England or Wales, in general or quarter sessions assembled, or at any adjournment thereof, that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants, and for the security of property within the county, it shall be lawful for them to set forth the same, by a report in writing under the hands of the majority of the justices there present, and to declare how many constables are needed in their opinion to be appointed within their county for the purposes aforesaid, and the rates of payment which it would be expedient to pay to the chief and other constables; and every such report shall be sent to one of Her Majesty's principal secretaries of state: provided always, that the number of constables shall not be more than one man for every thousand of the inhabitants, according to the last parliamentary enumeration of the popula-



tion for the time being, the population of the boroughs and towns hereinafter excepted from the operation of this Act being deducted therefrom.

2. *Alteration of number of constables.*] That it shall be lawful for the justices assembled in general or quarter sessions from time to time, with the consent of one of Her Majesty's principal secretaries of state, to increase or diminish the number of constables first appointed under this Act for their county.

3. *Rules for their government, pay, &c., to be made by the secretary of state.*] It is expedient that the rules for the government, pay, clothing, and accoutrements, and necessities of such constables as may be appointed under this Act be uniform, as nearly as may be; that such rules shall be from time to time made by one of Her Majesty's principal secretaries of state, but not so as to increase the number of men proposed to be appointed; and the rules so made shall be sent by the clerk of the peace for each county in which or in any division of which this Act shall be in operation: and it shall be lawful for the secretary of state, upon the representation of the justices of the county, setting forth any special reasons, to amend or add to such rules so as to make them applicable to the special circumstances of such county; and all such rules shall be binding on all persons whom they may concern; and copies of all such rules shall be laid before both houses of parliament within six weeks after the making thereof, if parliament is then sitting, and if parliament is not sitting, then within six weeks after the next meeting of parliament.

4. *One or more chief constables of the county to be appointed, who may serve for more than one county.*] That as soon as any such rules, as finally settled, shall have been received from the secretary of state, the justices of the county in general or quarter session assembled, or at any adjournment thereof, shall, subject to the approval of the secretary of state, appoint a person duly qualified according to the rules to be chief constable of the county, and in every case of vacancy of the office shall, subject to the like approval, appoint another fit person in his room; and every chief constable so to be appointed may hold his office until dismissed by the justices in general or quarter session assembled, or at any adjournment thereof: provided always, that when any county shall have been divided for the purpose of returning members to serve in parliament for each division, it shall be lawful to appoint two chief constables for such county, if the justices of such county shall think fit: provided also, that it shall be lawful to appoint the same chief constable for two or more adjoining counties or parts of counties, if the justices of such counties in general or quarter session assembled shall mutually agree to join in such appointment. This latter proviso, however, as to the appointment of the same chief constable for two or more adjoining counties or parts of counties, is now repealed, and other provisions substituted for it, by stat. 20 Vict. c. 2, *post*, p. 40.

5. *Notice of proceedings under this Act to be inserted in notices now required by law.*] That with the notice of the time of holding any such general or quarter session, or adjournment thereof, as now required by law, notice shall be given of the day and hour at which any business relating to the adoption of this Act, or the appointment



or dismissal of any chief constable under this Act, or the increase or diminution of the number of constables, will begin at such session ; and the clerk of the peace of each county shall give such notice as last mentioned on the requisition of any five justices acting for such county.

6. *Chief constable to appoint the petty constables.*] That subject to the approval of two or more justices of the county in petty sessions assembled, the chief constable shall appoint the other constables to be appointed for the county, and a superintendent to be at the head of the constables in each division of the county, and at his pleasure may dismiss all or any of them, and shall have the general disposition and government of all the constables so to be appointed, subject to such lawful orders as he may receive from the justices in general or quarter session assembled, or at any adjournment thereof, and to the rules established for the government of the force.

7. *Chief constable empowered to appoint a deputy, under certain restrictions.*] The chief constable shall, subject to the approval of the justices in general or quarter session assembled, or at any adjournment thereof, appoint one of the superintendents to act as his deputy in case of his being incapable, from illness or necessary absence from the county, to perform the duties of chief constable of the county ; and the deputy so appointed shall in such case as aforesaid, and also in case of any vacancy of the office of chief constable by death or otherwise, have all the powers, privileges, and duties of the chief constable : provided always, that no deputy chief constable shall be capable of continuing to act with the powers of chief constable during any vacancy of the office for more than three calendar months after the vacancy has been occasioned.

8. *Constables to have the authority of special constables under 1 & 2 W. 4, c. 41.*] The chief constable and other persons so appointed, shall be sworn as constables before a justice of the county, and shall have all the powers, privileges, and duties throughout the county, and also in all liberties, and franchises, and detached parts of other counties locally situated within such county, and also in any county adjoining to the county for which they are appointed, which any constable duly appointed has within his constablewick by virtue of the common law, or of any statute made or to be made ; and every provision of the first-recited Act shall be deemed to extend to the constables appointed under this Act, except as to the manner of their appointment and dismissal, the time for which they shall serve, and the manner in which their allowances shall be paid, or as to any matter herein expressly otherwise provided (a).

9. *Constables disqualified from voting at certain elections.*] No chief constable or other constable appointed by virtue of this Act shall, during the time he shall continue to be such constable, or within six calendar months after he shall have ceased to be such constable, be capable of giving his vote for the election of a member to serve in parliament for the county in which he is so appointed, or for any county adjoining thereunto, or for any city or borough within any of the said counties ; nor shall any such constable, by word,

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(a) See sections 11 and 16 of the 1 & 2 Will. 4, c. 41, *supra*.



message, writing, or in any other manner endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any person to be a member to serve in parliament for any such county, city, or borough; and if any such constable shall offend therein he shall forfeit the sum of twenty pounds, to be recovered by any person who will sue for the same by action of debt, to be commenced within six calendar months after the commission of the offence; and one moiety of the sum so recovered shall be paid to the informer, and the other moiety thereof to the treasurer of the county, to be by him applied for the purposes of the police under this Act; provided always, that nothing in this enactment contained shall subject any constable to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

10. *Constable appointed under this Act not to exercise any other employment, &c.*] All chief constables or other constables appointed under this Act shall be restrained from employing themselves in any office or employment for hire or gain other than in the execution of their duties under this Act, and shall be exempt from being returned and from serving upon any juries or inquests whatsoever, or in the militia, nor shall they be inserted in any jury lists while they shall continue to be such constables.

11. *Not to prevent constables from receiving half-pay.*] No office or employment as a chief constable or constable under this Act shall prevent the holder thereof from receiving any half-pay to which if he did not hold or have such office or employment, he might be or become entitled.

12. *Penalty on constables for neglect of duty.*] Every constable appointed under this Act who shall be guilty of any neglect or violation of duty in his office of constable, and shall be convicted thereof before any two justices of the peace for the county, shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary then due to such offender, or, in the discretion of the justices by whom he shall be convicted, may be imprisoned, with or without hard labour, for any time not more than one calendar month.

13. *Constables not to resign without leave or notice.*] No constable appointed under this Act shall be at liberty to resign his office, or to withdraw himself from the duties thereof, unless expressly allowed so to do in writing by the chief constable or superintendent under whom he may be placed; or unless he shall give to such chief constable or superintendent one calendar month's notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable, on being convicted thereof before any two justices of the peace for the county, to forfeit all arrears of pay then due to him, or to a penalty not more than five pounds.

14. *Constables dismissed to deliver up accoutrements, &c.*] That every constable appointed under this Act who shall be dismissed from or shall cease to hold and exercise his office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty to the chief constable or superintendent, or to such person and at such time and place as shall be directed by the said



chief constable or superintendent, shall be liable, on being convicted thereof before any two justices of the peace for the county, to imprisonment, with or without hard labour, for any time not exceeding one calendar month; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize to the use of the county police, all the clothing, accoutrements, appointments, and other necessities which shall not be so delivered over, wherever the same may be found.

15. *Penalty on unlawful possession of accoutrements and assuming dress of constables.*] That every person, not being a constable appointed under this Act, who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof, or who shall put on the dress, or take the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done, any act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he may be liable for such offence, be liable, on being convicted thereof before any two justices of the peace for the county, to a penalty not more than ten pounds.

16. *Penalty on publicans harbouring constables during the hours of duty.*] If any victualler or keeper of any house, shop, room, or other place for the sale of any liquors, whether spirituous or otherwise, shall knowingly harbour or entertain any constable belonging to the said force, or permit such constable to abide or remain in his house, shop, room, or other place during any part of the time appointed for his being on duty, every such victualler or keeper as aforesaid, being convicted thereof before any two justices of the peace for the county, shall for every such offence, forfeit and pay such sum not exceeding five pounds, as they shall think meet.

17. *Chief constable to attend at quarter sessions.*] Every chief constable, unless prevented by sufficient cause, shall attend every general and quarter session of the justices of the county, and at every adjournment thereof, and shall make quarterly reports to the justices of all matters which they shall require of him concerning the police of the county, and shall obey all lawful orders and warrants of the said justices in the execution of his duty, and that the superintendents of divisions shall in like manner attend every session of the justices holden for their respective divisions, and shall make the like reports to the justices of such divisions.

18. *Allowances for necessary expenses.*] In addition to the salary to be paid to the chief constable of the county, reasonable allowances shall be made to him for extraordinary expenses necessarily incurred by him, and by the constables under his orders, in the apprehension of offenders, and in the execution of his and their duty under this Act; which allowances shall be examined and audited by the justices of the county in quarter sessions assembled.

19. *Constables may be appointed for separate divisions.*] It shall be lawful for the justices of any county in general or quarter sessions assembled, in case they shall not resolve on appointing constables



under this Act for the whole of their county, to resolve, with the approval of the secretary of state, on appointing constables under this Act for the division of the county for which special or petty sessions of the peace are holden, or for any number of such divisions of the county, and for that purpose they or the greater number of them assembled, not being less than two, shall have all the powers with regard to such division or divisions which they have with respect to the whole county, under the provisions hereinbefore contained; and all the provisions hereinbefore contained with respect to the whole county, shall be deemed to apply to such division or divisions as if it or they were the whole county; and the provisions relating to the chief constable shall be deemed to apply to the superintendent of each division: Provided always, that if constables shall be appointed under this Act in any number of adjoining divisions, a separate police establishment shall not be formed for each division, but the whole shall be consolidated into one police establishment for the whole of such adjoining divisions, and that if this Act shall be afterwards adopted for the whole county, the several divisional establishments of police shall be consolidated and form part of the general county police establishment.

20, 21, 22, and 23, as to expenses being defrayed out of the county rate, repealed by 3 & 4 Vict. c. 88, s. 3.

24. *Exemption of borough towns, 5 & 6 Will. 4, c. 76.*] Nothing in this Act contained shall extend to authorize the justices of the peace of any county to appoint any constable within any borough incorporated under the provisions of an Act passed in the sixth year of the reign of His late Majesty, intituled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or under the provisions of any charter granted in pursuance of the said Act; nor shall any such borough, for which a separate court of quarter sessions of the peace shall be holden, be liable to contribute to the expenses of this Act, or to be charged with any part thereof in their account with the treasurer of such county.

25. *Discontinuance of constables under local and other Acts where this Act is in operation.*] Upon the appointment of constables under this Act in any county, or in any division or divisions of a county, the power to appoint and pay, and to make rates for paying, any constables, in any hundred, parish, township, or place within such county, division or divisions, except such boroughs as aforesaid, other than high constables or other than special constables appointed under the provisions of the first-recited Act, or of any Act made for enlarging the powers of magistrates under the said Act, or otherwise than under this Act, and also all the powers and duties of all such constables, shall cease and determine; and all sums of money then already levied for the purpose of such other constables shall be applied, after defraying all charges to which the same are then liable, in and towards payment of the county rates levied upon such hundred, parish, township, or place: provided always, that all arrears of rates made for the purposes aforesaid shall be levied and collected as if this Act had not been made: provided also, that nothing herein contained shall prevent or invalidate the appointment of parochial constables; provided also, that nothing herein contained shall prevent



the appointment of any constable to act as returning officer in any election, whenever such appointment may be necessary.

26. *Not to affect for two years any places where the population is more than 10,000.*] Notwithstanding anything herein contained, the power to appoint and pay, and to make and levy rates for paying constables, under any Act of parliament made for watching any town, parish, or place, which by the last parliamentary enumeration of the population contained more than ten thousand inhabitants, and the powers and duties of all constables appointed by the commissioners for the execution of any such Act, shall continue, as if this Act had not been made, for two years after the passing of this Act, and thence until the end of the then next session of parliament.

27. *Certain liberties, &c., considered as forming parts of counties for purposes of this Act.*] For the purposes of this Act, all detached parts of counties, and also all liberties and franchises (other than such incorporated boroughs as aforesaid), shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties then as forming part of that county with which they have the longest common boundary: and so much of every such detached part of any county, or of any liberty and franchise, and which is not of itself an entire hundred, wapentake, ward, rape, lathe, or such other division of a county, shall be considered as forming part of that hundred, ward, wapentake, rape, lathe, or such other division whereby it shall be surrounded in the county of which it shall be considered a part for the purposes of this Act, or if partly surrounded by two or more hundreds, wapentakes, wards, rapes, lathes, or such other divisions, then as forming part of that one with which it shall have the longest common boundary.

28. *Meaning of "county."*] In construing this Act, the word "county" shall be construed to mean, county, riding, or division, having a separate court of quarter sessions of the peace, or in which separate county rates are made; and all things hereinbefore authorized to be done at quarter sessions, may be done by the justices in general sessions assembled in those counties in which county rates are made in general sessions; and nothing herein contained shall extend to any part of the metropolitan police district.

29. *Act may be amended.*] This Act may be amended or repealed by any Act to be passed in this session of parliament.

3 & 4 Vict. c. 88.—*An Act to amend the Act for the Establishment of County and District Constables.*

Sect. 1. *Horses, &c., in the service of the police exempted from toll.*] An Act was passed in the last session of parliament [2 & 3 Vict. c. 93], intituled "An Act for the Establishment of County and District Constables by the Authority of Justices of the Peace;" and it is expedient to make additional provisions for facilitating the execution thereof, and otherwise to amend the same: it is enacted that no toll shall be demanded or taken on any turnpike road or bridge for any horse, or police van, carriage, or cart, passing along such road or bridge in the service of the police established under the



provisions of the said Act, provided that the constable in charge of such horse, van, carriage, or cart, if not the chief constable, shall produce an order in writing under the hand of the chief constable, or shall have his dress according to the regulations of the police force at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty not more than five pounds; and in all such cases the proof of exemption shall be upon the person claiming the same.

2. *Outlying districts may be transferred from one county to another.*] For the purposes of the said Act [2 & 3 Vict. c. 93], all detached parts of counties shall be considered as part of that county by which they are wholly or partly surrounded; and whereas many populous towns are situated in more than one county; and also the boundary of many counties is so irregular, that parts thereof, although not wholly separated from the main body of the county, may yet be more conveniently united, for the purposes of the said Act, with some neighbouring county; it shall be lawful for the justices of any two or more neighbouring counties, in their several general or quarter sessions assembled, from time to time to agree that such parts of their several counties, as to them shall seem fit, shall, for the purposes of the said Act, be considered as forming part of any other of the said counties; and whenever any such district shall be so transferred, for the purposes of the said Act, from one county to another, with the consent of the justices of both the last-mentioned counties, such district shall be considered, for the purposes of the said Act, as if it were detached from the county to which it belongs, and wholly surrounded by the county to which it is so transferred; and all the provisions contained herein, or in the said Act, or in an Act passed in the last session of parliament, intituled "An Act for the better Administration of Justice in detached Parts of the Counties," respecting detached parts of counties, shall be taken to apply to such transferred districts.

3. *So much of first-recited Act as directs the expenses to be paid out of the county rate, repealed; and justices in general or quarter sessions to make a police rate.*] So much of the first-recited Act as provides that the expenses of putting the said Act in execution shall be paid out of the county rate, shall be repealed; and that, for the purposes of defraying the expenses of the said Act in any county which, or in any part of which, the said Act shall be put in force, the justices of such county in general or quarter sessions assembled, shall make a fair and equal police rate, and for that purpose shall assess and tax the whole district, for which the constables are appointed, rateably and equally, according to a certain pound rate of the full and fair annual value of all messuages, lands, tenements, and hereditaments liable to the county rate, or which, if the whole of the said district were to all intents and purposes within their county, would be liable to the county rate therein, including all detached parts of other counties, and also all liberties and franchises (except as hereinafter excepted), which are locally situated in such county, or wholly or partly surrounded by such county, and declared by the



said Act to be considered as forming part of such county, for the purposes of the said Act, but excluding all detached parts of the said county, all parts of the county contributing to the police rate of any other county, or to the metropolitan police rate, and all incorporated boroughs which are or shall be within the provisions of an Act passed in the sixth year of the reign of His late Majesty for regulating corporations, or of any charter granted in pursuance of the last-recited Act, or of any Act made for the amendment thereof, and all those towns and places for which constables or watchmen shall have been appointed under the Act passed in the fourth year of His late Majesty, making provisions for the lighting and watching of parishes in England and Wales, or under any local Act authorizing the appointment of constables or watchmen in any town or place, and authorizing rates to be made for defraying the expenses of such constables or watchmen, and shall not be discontinued, before the passing of this Act, until they shall be discontinued, or until the chief constable of the county within which, for the purposes of this and the said first-recited Act, such parish, town, or place is situated, shall have notified, as he is hereinafter empowered to do, that he is ready to undertake the charge of such parish, town, or place: provided always, that all expenses of putting the said Act in execution before the passing of this Act shall be paid out of the county rate as if this Act had not been made.

4. *How property rateable is to be valued.*] The value of all property rateable for the purposes of the said Act shall be computed by the said justices according to the last valuation for the time being acted upon in assessing the county rate, or liberty rate, or rate in the nature of a county rate (if any) to which such property is rateable, unless, in the case of any liberty or franchise, or detached part of any county, the justices of the county in which such liberty or franchise or detached part is situated, shall be dissatisfied with such valuation.

5. *Police rate to be levied with the county rate.*] Every police rate which the justices shall have made as aforesaid, shall be collected in their county from the persons who are liable to contribute thereunto with and as part of the county rate; and the warrants issued by the justices to the high constables, and by the high constable to the overseers and others required to collect the county rates, shall distinguish between the rates to be levied from those places which are liable to the police rate in that county, and those which are not liable thereunto, and shall state how much is levied for the county rate, and how much for the police rate, and the said rates shall be levied accordingly.

6. *Contributions on account of liberties and detached parts of counties.*] It shall be lawful for the justices of any county, in general or quarter session assembled, for the purpose of obtaining the sum which ought to be contributed from any detached part of any other county, or any liberty or franchise not contributing to the county rate of such first-mentioned county, towards any such police rate, from time to time to issue a warrant under the hands of two or more of them, by which warrant they shall require the treasurer of the county to which such detached part belongs, or the treasurer or



other person (if any) having the receipt of any liberty rate, or rate in the nature of a county rate, levied within such liberty, to pay to the treasurer of such first-mentioned county, out of the monies collected by way of county rate, liberty rate, or rate in the nature of a county rate, the amount mentioned in the warrant; and that the person to whom any such warrant shall be directed, shall, within forty days from the delivery of such warrant to him, pay the amount to the treasurer of the county from which such warrant shall have issued, and shall be allowed for the same in his accounts with his county or liberty; and every such warrant shall specify the rate in the pound at which the sum mentioned therein shall be computed (a).

7. *How treasurer of such other county or liberty shall be reimbursed.*] For the purpose of reimbursing the treasurer or other person by whom any such sum shall have been paid, the justices of the county to which such detached part belongs, or of the liberty or franchise, as the case may be, shall order a police rate to be made, at the rate mentioned in the warrant, upon such detached part of their county, or upon such liberty or franchise respectively, which shall be levied and collected thereon with and as part of the county rate, liberty rate, or rate in the nature of a liberty rate to which such detached part of a county or such liberty or franchise is liable, in like manner as the police rate is levied and collected by order of the justices of any county for the expenses of the police of their own county.

8. *In case of default, or for other good cause, the amount may be levied on the inhabitants.*] If payment shall not be made within the said forty days, according to the exigency of the warrant, or if there shall be no person to whom such warrant can be directed, or no county rate, liberty rate, or rate in the nature of a county rate, to which the inhabitants of such liberty, or detached part of another county contribute, or if the justices of the first-named county shall be dissatisfied with the valuation upon which such rate was assessed, or if for any other reason, it shall seem more convenient to the justices of the first-mentioned county, it shall be lawful for them to levy the full amount of the police rate upon any such detached part of another county or liberty or franchise in respect of which such amount is demandable; and for the purpose of levying and collecting such rates the justices of the first-mentioned county shall have within every such detached part of another county, and within every such liberty and franchise respectively, the same powers which they have for levying and collecting county rates within the limits of their own commission; and such rates may be levied and collected by the like methods, and subject to the same right of appeal, as if such detached parts of another county or such liberty or franchise respectively were part of such first-mentioned county, and within the hundred, wapentake, ward, rape, lathe or such other division of the county in which they are locally situated; or, if not wholly lying in one hundred, wapentake, ward, rape, lathe, or such other division, in that one with which they have the longest common boundary respectively;

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(a) See stat. 13 & 14 Vict. c. 105, *post*, p. 42.



and the high constable of every such hundred, wapentake, ward, rape, lathe, or such other division, on the receipt of a warrant to that effect, under the hands of two or more of the said justices, shall collect the said rates; and the overseers of the poor, or in default of overseers, or in case there shall be no separate rate for the relief of the poor in any portion of such detached part, or liberty, or franchise, such person or persons as the justices of the first-mentioned county in quarter session assembled shall appoint for that purpose, in every parish and place to which such detached parts or liberty or franchise, or any part thereof, belong, upon receipt of a warrant to that effect from such high constable, shall pay the amount assessed upon their parish or place respectively, or upon that part of it which is liable thereunto, in like manner and subject to the like penalties in case of default, as if such detached parts or liberty or franchise were part of such first-mentioned county, and within such hundred, wapentake, ward, rape, lathe, or other division as aforesaid respectively.

9. *Right of inspecting county and liberty rates.*] The treasurer of any county, or any person having an order for that purpose, under the hand of such treasurer, may inspect any county rate made or to be made for any other county or liberty or franchise, the inhabitants of any part of which shall be liable to be rated to the police rate in the first-named county, and may also inspect any returns concerning all or any of the parishes, townships, precincts, and places, whether parochial or extra-parochial, the inhabitants of which are liable to be rated as aforesaid, which have been, or are to be delivered, in pursuance of any of the Acts relating to county rates, and may take copies or extracts from any such rates or returns, without payment of any fee or reward; and if any person, having the custody of any such rate or return, shall wilfully neglect or refuse to permit any such treasurer or other person authorized as aforesaid to inspect the same, or to take copies or extracts from the same, within two days after such order shall have been produced and shown to him, or a copy thereof left at his usual place of abode, he shall, on conviction thereof before any two justices of the peace, forfeit and pay for every such offence such sum not exceeding ten pounds, as they shall think meet.

10. *Superannuation fund to be provided for constables.*] There shall be deducted from the pay of every constable belonging to the police force, established in any county under the first-recited Act, a sum, after such yearly rate as the justices of the county in general or quarter session assembled shall direct, not being a greater sum than two pounds ten shillings in a hundred pounds, which sum so deducted, and also the monies accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any justice of the peace upon drunken persons, or for assaults upon police constables, and from moieties of fines and penalties awarded to informers (being police constables) on summary convictions, as shall be directed by such justice to be paid for the benefit of this fund; and all monies arising from the sale of worn or cast clothing, supplied for the use of the constables in any county, shall, from time to time, be invested in such manner as the justices



in general or quarter session assembled shall direct; and the interest and dividends thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested in the like manner, and accumulate so as to form a superannuation fund, and shall be applied, from time to time, for payment of such superannuation or retiring allowances or gratuities as may be ordered by the justices in general or quarter session assembled, upon the recommendation of the chief constable, at any time, to any of the said constables as hereinafter provided; and the justices shall guarantee the security of the superannuation fund of their county, and make good out of the county stock any deficiency which may arise in such fund from the default of the treasurer or other person intrusted with the custody or management thereof (a).

11. *Rates of allowances from the said fund.*] It shall be lawful for the justices upon such recommendation, if they shall think fit, to order that any of the said constables may be superannuated, and receive thereupon, out of the superannuation fund, a yearly allowance, subject to the following conditions, and not exceeding the following proportions; (that is to say), that if he shall have served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards, an annual sum not more than two-thirds of his pay; provided that if he shall be under sixty years of age, it shall not be lawful to grant any such allowance, unless upon the certificate of the chief constable that he is incapable, from infirmity of mind or body, to discharge the duties of his office; provided also, that if any constable shall be disabled from any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant him any allowance not more than the whole of his pay, but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or to prevent him being dismissed without superannuation allowance.

12. *Station-houses and strong rooms to be provided.*] It shall be lawful for the justices, in general or quarter session assembled, of any county in which or in any part of which constables shall be appointed under the first-recited Act, if they think fit, to order that station-houses and strong rooms, or either of them, for the temporary confinement of persons taken into custody by the constables, be provided in such places as the said justices shall think fit, and upon such plan as shall be approved by one of Her Majesty's principal secretaries of state: and for that purpose to purchase and hold lands and tenements, or to appropriate to that purpose any lands or tenements belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; and the expense of building, hiring, or otherwise providing, repairing, and furnishing such station-houses and strong rooms shall be defrayed out of the police rates.

13. *Money may be borrowed on credit of the police rates.*] It shall be lawful for the justice in general or quarter session assembled, to borrow money for the purpose of purchasing any such

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(a) See stat. 13 & 14 Vict. c. 87, *post*, p. 41.



lands and tenements, or of building any such station-houses and strong rooms, and to charge the future police rates with the amount of the loan, and with interest thereon: provided always, that any money borrowed for such purpose shall be repaid by yearly instalments, not less than one-twentieth part of the sum borrowed, with interest on the same, in any one year.

14. *Boroughs may agree to consolidate their police with county police.*] It shall be lawful for the justices of any county, in which constables shall have been appointed under the said Act, and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments; and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough, which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, except as is herein otherwise provided; and every such agreement which shall have been agreed to by the justices of the county in general or quarter session assembled, on the one hand, and by the mayor, aldermen, and burgesses of the borough, by their council, on the other hand, shall be binding on both parties, as soon as a memorandum of such agreement under the hands of two or more justices of the county, and countersigned by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof under the common seal of the borough shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto, without the consent of the other party, after six months' notice in writing shall have been given to the other party; such notice, if given by the county, to be under the hands of two or more justices, and countersigned by the clerk of the peace, or, if given by the borough, to be under the common seal of the borough: provided always, that no such notice shall be given by the justices, or by the borough, unless in either case such notice shall be agreed upon by a majority of three-fourths of the justices attending at any general or quarter session, or three-fourths of the council of the borough.

15. *Government of consolidated police.*] In all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables, he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough, without the consent of the chief constable; and so



much of the said Act for regulating corporations as empowers the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended, as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force.

16. *Appointment of local constables.—Oath of local constables.*] The chief constable shall make out, and cause to be laid before the justices acting in and for every petty sessional division of the county, at one of their special sessions holden for hearing appeals against the poor rates, a list signed by him, of fit persons residing within every parish, township, and place within the division willing, in case of need, to serve as local constables during the year then next ensuing, for doing all things which belong to the office of constable within such parish, township, or place; and the justices of each of such divisions, at any time, in petty sessions assembled, shall select from the persons named in such list so many local constables as they shall think fit to appoint for every such parish, township, or place, and shall cause to be administered to them the following oath; (that is to say),—

“I, *A. B.* do swear, that I will well and truly serve our sovereign Lady the Queen in the office of local constable, for the parish [*or township, &c.*] of —, for the year ensuing, or until another shall be sworn in my stead, according to the best of my skill and knowledge, So help me God.”

And all such local constables shall be subject to the authority of the chief constable, and to such regulations as shall be made for their government by one of Her Majesty's principal secretaries of state, and shall have within the whole county, and also within all liberties and franchises, and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities of a constable within his constablewick, but shall not be bound to act as a constable beyond the parish, township, or place for which they are severally appointed and sworn; and the chief constable, from time to time, shall cause a list to be printed and published of the persons so appointed and sworn as local constables within each division, with the names of the places for which they are severally appointed.

17. *Fees and allowances for special services.*] The justices of the county in general or quarter sessions assembled shall from time to time, subject to the approval of one of Her Majesty's principal secretaries of state, settle tables of fees and allowances for the service of summonses and execution of warrants, and for the performance of the other occasional duties which may be required of the said local constables; and whenever any duty for which any such fee or allowance shall have been settled shall be performed by one of the constables appointed under the first-recited Act, the amount thereof shall be accounted for and paid to the treasurer of the county, or such other person as shall be appointed by the justices to receive the same, and shall be applied towards defraying the expenses of putting the said Act in execution, and when such duty shall have been per-



formed by one of the local constables appointed under this Act, the amount of the fee or allowance shall be paid to such local constable, under such regulations as shall be made from time to time by the justices in general or quarter sessions assembled.

18. *Accounts of allowances to be kept.*] The justices usually acting in and for every division shall take care that full, true, and particular accounts be kept of all such fees and allowances within their division, and shall once in every quarter of a year cause an account, with all proper vouchers for verifying the same, to be delivered to the treasurer of the county or other person appointed to receive the same.

19. *Additional constables may be appointed at the costs of individuals.—Discontinuance thereof.*] That it shall be lawful for the chief constable of any county, with the approval of the justices of the county in general or quarter session assembled (if he shall think fit), on the application of any person or persons showing the necessity thereof, to appoint and cause to be sworn in any additional number of constables, at any place within the limits of his authority, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the chief constable, and for such time as he shall think fit: and every such constable shall have all the powers, privileges, and duties of other county constables; provided always, that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constables so appointed shall be discontinued, and thereupon the chief constable shall discontinue such additional constables.

20. *Power of 3 & 4 W. 4, c. 90, and of local Acts for levying rates to cease, except as hereby reserved for paying additional constables.—Proviso as to places situated in more than one county.*] And whereas an Act was passed in the fourth year of the reign of His late Majesty, making provisions for the lighting and watching of parishes in *England* and *Wales*, and divers Acts have been made authorizing the appointment of constables and watchmen, by day or night, in sundry towns and places within the counties in which the first-named Act may be put in force, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen; be it enacted, that notwithstanding anything contained in the said Act of the last session of parliament, the constables or watchmen appointed in and for any parish under the said Act of the fourth year of the reign of His late Majesty, or in and for any town or place under any such local Act as last aforesaid, and not discontinued before the passing of this Act, shall continue to act in their respective appointments, and shall be subject to the same authorities as heretofore; and all such Acts shall continue in force until it shall be notified by the chief constable of the county in which such parish, town, or place is situated, to the inspectors, commissioners, or other persons having authority over such constables or watchmen as aforesaid, by writing under his hand, that he is ready to undertake the charge of such parish, town, or place on some day to be specified in the notice, which notice shall be published within such parish, town, or place in such manner as shall seem fit to the



chief constable, for the purpose of making the same to be generally known; and upon the day so named the watchmen or constables appointed within such parish, town, or place under the said Act of the fourth year of the reign of His late Majesty, or under such local Act, shall be discontinued as a separate force; and all powers for assessing and levying any rate in such parish, town, or place, the whole or any part of which shall be applicable to the payment of such watchmen or constables, or any expenses incident thereunto, shall cease, so far as such powers relate to any whole rate so applicable, or to that part of any rate which shall be so applicable, except for such purposes as are hereinafter mentioned: Provided always, that notwithstanding anything in the first-named Act contained, the powers of all such Acts shall enure for the purpose of enabling the inspectors, commissioners, or other persons charged with the execution of any such Act, to make such application as aforesaid to the chief constable of the county for the appointment in any such town or place of an additional number of constables, and to assess and levy such rates as are authorized by the said Acts in each case for defraying the expenses of constables or watchmen, and to apply them in defraying the expenses of so many additional constables in such town or place respectively as the chief constable, on their application, and with the approval of the justices as aforesaid, shall appoint there; provided also, that where any parish, town, or place, in which constables have been appointed under any such local Act shall be situated in more than one county, such notice shall not be given by the chief constables of either county to the commissioners or other persons having authority over the constables in such parish, town, or place, until after constables shall have been appointed under the first recited Act in each of such counties.

21. *Watch-boxes and accoutrements provided under local Acts to be given up for use of the county police.*] Upon the day mentioned in such notice as last aforesaid, all watch-houses and watch-boxes in any such parish or place, and all arms, accoutrements, and other necessities provided at the public expense for the watchmen or constables therein, shall be given up to such persons as shall be named by the said chief constable, for the use and accommodation of the constables to be appointed under the first-recited Act: and in case any person having the charge, control, or possession of any watch-house, watch-box, arms, accoutrements, or necessities as aforesaid, shall neglect or refuse to give up the same as hereinbefore required, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay, over and above the value of the property not given up, such sum, not exceeding five pounds, as the said justices shall think meet; and where there shall be any building in such parish or place as aforesaid, a part only of which building shall have been heretofore used as a watch-house, such part shall be given up every day, from the hour of four in the afternoon until the hour of nine in the forenoon, for the use and accommodation of the constables to be appointed under the first-recited Act; and if any person having the charge, control, or possession of any such building, shall neglect or refuse to give up such part thereof for the purposes aforesaid, or permit free access thereto,



or egress therefrom, during any portion of the time above prescribed, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum, not exceeding five pounds, as the said justices shall think meet.

22. *Rates already imposed to be collected.*] Any rate authorized by the said Act of the fourth year of the reign of His late Majesty, or by any such local Act, for defraying the expenses of the constables or watchmen in any parish or place, made previous to the day on which the said chief constable shall undertake the charge thereof, shall be levied and collected in the same manner as if the first-recited Act or this Act had not been passed; and that nothing herein contained shall be deemed to affect or alter any powers or authorities for assessing and levying any rate in any such parish or place so far as such rate may relate to paving, lighting, cleansing, or any other object, except the constables or watchmen, or any expenses incident thereto.

23. *Provision for outstanding debts.*] There are certain parishes and places in which monies have been borrowed or advanced, and debts contracted, under some one or more of such Acts as last aforesaid, for the building of watch-houses, and for various expenses connected with the constables or watchmen therein, and such monies and debts remain unpaid, and it is expedient that the same be discharged; all such monies and debts in any parish or place of which the said chief constable shall undertake the charge shall, notwithstanding anything hereinbefore contained, be chargeable upon the rates out of which such monies or debts have been heretofore in part paid, or would have been payable if the first-recited Act or this Act had not been passed, and such rates shall be from time to time assessed and levied for the payment of such monies and debts until the same shall be entirely discharged and satisfied.

24. *Constables appointed under the first-recited Act and this Act to be discontinued when decided to be unnecessary.*] Repealed by stat. 19 & 20. Vict, c. 69, s. 21.

25. *Where two chief constables, rates may be levied separately.* In any county in which two chief constables shall have been appointed under the authority of the said Act, it shall be lawful for the justices of the said county, if they shall think fit, in general or quarter session assembled, to order that separate accounts shall be kept of the expenses of the force placed under the authority of each chief constable, and that the police rates shall be assessed and levied separately upon the districts of each chief constable, and applied separately to the expenses of the police force maintained therein.

26. *Number of superintendents may be altered by the justices.*] It has been found necessary that a superintendent be appointed for every petty sessional division of a county in which the first-recited Act has been adopted; it shall be lawful for the justices in general or quarter session assembled, with the approval of one of Her Majesty's principal secretaries of state, to direct how many of the constables shall be appointed superintendents, and to direct the appointment of inspectors and serjeants, and other subordinate officers, with such gradations of rank and pay, and such variety of duties as shall be found expedient; and it shall be lawful for the



justices to make such orders as to them shall appear expedient, touching the attendance of the superintendents, inspectors, serjeants, or other subordinate officers among the said constables, upon the justices at their several sessions.

27. *Formation of police districts.*] The number of constables needed may be different in different parts of the same county; it shall be lawful for the justices of the peace for any county in general or quarter sessions assembled, if they shall be of opinion that a distinction ought to be made in the number of constables appointed to keep the peace in different parts of the county, to divide the county or any part thereof into police districts, consisting of such parishes and places or parts of parishes and places as shall appear to them most convenient, and to declare the number of constables which ought to be appointed for each police district, and from time to time to alter the extent of such police districts, and the number of constables to be appointed for each; and a report of every such proposed division or alteration, and of the number of constables proposed for each police district, with an estimate of its extent and population, and of any other circumstances upon which the determination of the justices shall have been grounded, shall be sent to one of Her Majesty's principal secretaries of state; and if approved by the secretary of state such division or alteration shall be deemed to be completed.

28. *Each police district to pay for its own constables. Constables subject to duty in any part of the county, as if no district had been made.*] If the secretary of state shall approve of such division of the county, or of any part thereof, into police districts, for the purpose aforesaid, the expense of putting the said Act into execution in such county, or part of such county, shall be classed under two heads, of general expenditure and local expenditure; and the general expenditure shall be defrayed in common by all the districts, and the local expenditure, consisting of the expense of the salaries and clothing of the constables appointed for each district, and such other expenses as the justices, subject to the approval of the secretary of state, shall direct to be included under this head, shall be defrayed by each police district separately; and the police rates shall be assessed and levied in each police district accordingly: provided always, that notwithstanding the division of any county, or part of any county into police districts, the constables of all such districts shall continue as part of the same force, and be subject to the same authority, and be liable, if required, to perform the same duty, in any part of the county or elsewhere, as if no such division into police districts had been made.

29. *Justices may form any number of parishes, containing not less than 25,000 inhabitants, into a division for the purposes of this Act.*] In case the justices of any county shall not resolve on appointing constables, under the said Act of the last session, for the whole of their county, it shall be lawful for them, if they shall think fit, in general or quarter session assembled, to form any number of contiguous parishes, townships, or places into a division, so that such division contain not less than twenty-five thousand persons, according to the last census for the time being, and to appoint constables under



the said Act for every such division; and all the provisions of the said Act as amended by this Act, and of this Act, relating to the appointment of constables for any division or divisions for which special or petty sessions of the peace are holden, or relating to police districts, shall be deemed to apply to the police divisions so formed.

30. *Defining nature of notice.*] That with the notice of the time of holding any such general or quarter session or adjournment thereof, as now required by law, notice shall be given of the day and hour at which any business relating to the adoption of the provisions of this Act will be considered at such session.

31. *Chief constable to furnish to the clerk of the peace a monthly return of the disposition and number of the constabulary force.*] Every chief constable shall, on the first day of every month, transmit to the clerk of the peace for the county for which or for some district whereof such constable shall act, a return, showing the actual disposition and number of the constabulary force of the county or district for which such constable shall act during the preceding month; which return shall specify the changes made from time to time in such force, as well in number as by name, and shall distinguish by number and name the members of the police force of any other district serving within his district; and the clerk of the peace shall cause the said return to be laid before the justices at the next ensuing quarter sessions for examination.

32. *Monthly returns of the force to be made.*] Every superintendent appointed under this Act shall, on the first day of every month, send to the chief constable a return showing the actual disposition and number of the constables of the county under his superintendence during the preceding month, which return shall specify the changes made from time to time therein, as well in number as by name; and the chief constable shall send a copy of all such returns to the clerk of the peace for the county, to be laid before the justices of the peace at their next general or quarter sessions of the peace.

33. *How warrants of commitment may be executed.*] Whenever a warrant of commitment of any person to any gaol or house of correction shall be directed and delivered to any constable in any county in which constables shall have been appointed under the said Acts of the last session of parliament, it shall be lawful for the justice or justices by whom such warrant shall be signed, if he or they shall think fit, in and by such warrant, to command the constable to whom the warrant is directed, and all other constables to whom the warrant shall be successively delivered as hereinafter provided, to convey and deliver the body of the person so committed, with the warrant, into the custody of the constable who shall be in attendance at the nearest or most convenient station-house or strong room, belonging to the said police force lying in the way towards the said gaol or house of correction, or to such other constable as shall be appointed by the regulations of the police force to take charge of persons so committed; and every constable into whose custody any such person shall be so successively delivered shall indorse upon the warrant a certificate in writing under his hand of the delivery of



such person into his custody, and the time and place of such delivery, and such certificate shall discharge the constable so delivering over the body of such person from further execution of the warrant; and it shall be lawful for any constable into whose custody such person shall have been so delivered to complete the execution of the warrant, by conveying and delivering the body of such person either to the said gaol or house of correction, or into the custody of the constable in attendance at the next station-house, or strong room as aforesaid, or to such other constable as shall be appointed by the regulations of the police force to assist in taking charge of persons so committed; and every constable into whose custody any person shall be so delivered, and who shall have indorsed such certificate upon the warrant, shall have the same powers, privileges, and protections, for and in the execution of such warrant, as if the same had been originally directed to him by name.

34. *Interpretation clause.*] In construing this Act, the words "county" and "quarter sessions" shall be taken to be used in the same sense in which they are used in the first-recited Act; provided always, that neither in the first-recited Act, nor in this Act, shall the word "county" be taken to mean any liberty or franchise, having a distinct commission of the peace separate from the commission of the peace of the county or riding in which it is situated; provided also, that nothing herein contained shall extend to affect the Isle of Ely, or the powers of the justices named in the commission of the peace thereof, or to give any power or authority within the Isle of Ely to the justices named in the commission of the peace of the county of Cambridge.

35. *Act to be construed with Act of last session.*] This Act, and so much of the said Act of the last session of parliament, as is not inconsistent with this Act, shall be construed together as one Act; provided always, that no local constable appointed under this Act shall thereby become incapable of giving his vote for the election of any member to serve in parliament, or be restrained from employing himself in any office or employment for hire or gain.

36. *Act may be amended this session.*] This Act may be amended or repealed by any Act to be passed in this present session of parliament.

*By stat. 20 Vict. c. 2.—An Act to facilitate the appointment of Chief Constables for adjoining counties, and to confirm appointments of Chief Constables in certain cases.*

*Part of sect. 4. of 2 & 3 Vict. c. 93, repealed.*] Whereas by the Act of the second and third years of Her Majesty, chapter ninety-three, "for the establishment of county and district constables by the authority of justices of the peace," it is provided, "that it shall be lawful to appoint the same chief constable for two or more adjoining counties or parts of counties, if the justices of such counties, in general or quarter session assembled, shall mutually agree to join in such an appointment:" And whereas difficulties have arisen in certain cases in giving effect to the said enactment: Be it enacted by the Queen's most excellent Majesty, by and with the advice and



consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Sect. 1. So much of the fourth section of the said act of the second and third years of Her Majesty as is hereinbefore recited shall be repealed.

2. *Chief constable for two counties, &c.*] It shall be lawful for the justices of the peace of any county, in general or quarter session assembled, subject to the provisions of the said Act, to appoint a person to be chief constable of their county or of part thereof, although he may hold or be appointed to the office or offices of chief constable of any adjoining county or counties, or part or parts of counties : Provided that the justices of each county, in general or quarter session assembled, shall declare their consent that the office in their appointment may be held by such person together with such other office or offices.

3. *Previous appointments confirmed.*] And whereas doubts have arisen as to the validity of the appointment of chief constables in certain cases :

Every appointment heretofore made or expressed to be made by the justices of any county, in general or quarter session, of a chief constable for their county or part thereof, and all acts done under or with reference to every such appointment, either by the person appointed or by the justices of the county, or by any other persons whatsoever, shall be effectual and valid, notwithstanding any defect or informality in or in relation to such appointment, provided such appointment shall have been approved by one of Her Majesty's principal secretaries of state.

4. *How construed.*] The said Act of the second and third years of Her Majesty, the Acts of the session holden in the third and fourth years of Her Majesty, chapter eighty-eight, and of the session holden in the nineteenth and twentieth years of Her Majesty, chapter sixty-nine, and this Act, shall be construed together as one Act.

*By stat. 13 and 14 Vict. c. 87,—An Act for Payment of a Moiety of certain Penalties towards Police Superannuation Fund :—*

Sect. 1. *Justices may direct portions of penalties under 11 & 12 Vict, c, 49, to be paid to superannuation fund.*] Recites that by an Act passed in the fourth year of Her present Majesty, intituled "An Act to amend the Act for the Establishment of County and District Constables," it was enacted, "that the monies accruing from any portion of the fines imposed by any justice of peace upon drunken persons, or for assaults upon police constables, and from moieties of fines and penalties awarded to informers, being police constables, on summary convictions, as shall be directed by such justice to be paid for the benefit of that fund, should, with other monies therein mentioned, be invested so as to form a superannuation fund : " and that under the Act of the twelfth year of Her Majesty, to "Facilitate the performance of the Duties of Justices out of Sessions within England and Wales with respect to summary Convictions and Orders," where any person is convicted of a penalty, or ordered by a justice or



justices of the peace to pay any money, if the statute on which the information or complaint is framed contain no directions for the payment of such penalty or money to any person or persons, then the same is to be paid to the treasurer of the county, riding, division, or liberty, city, borough, or place, for which such justice or justices shall have acted; and that another statute passed in the said twelfth year of Her Majesty, "for regulating the Sale of Beer and other Liquors on the Lord's Day," repeals certain provisions and penalties, a moiety of which penalties might, under former Acts, have been directed to be paid for the benefit of the said superannuation fund, and substitutes other provisions and penalties for the provisions and penalties so repealed, but contains no direction for the payment of such substituted penalties to any person or persons: and enacts that a moiety of any penalty imposed on summary conviction under the said lastly recited Act may be directed, by the justice imposing the penalty, to be paid for the benefit of the superannuation fund hereinbefore mentioned, and shall be invested and otherwise dealt with accordingly.

*By stat. 13 & 14 Vict. c. 105,—An Act for facilitating the Union of Liberties with the Counties in which they are situate:—*

Sect. 1. *Petition for union of liberty with county.*] Recites that divers liberties (having separate commissions of the peace, and not being incorporated boroughs) have been constituted in England and Wales, and that it is expedient to enable a union of such liberties to be made with the counties in which they are situate: and enacts, that where it shall seem expedient to the justices of any liberty, or to the justices of the county in which any liberty is situate, that the union of the liberty with the county in which the same is situated should be effected under this Act, it shall be lawful for such justices, in general or quarter session assembled, to resolve that a petition shall be presented to Her Majesty, praying that such union take place, and thereupon to adjourn the further consideration of such petition until notice thereof shall be given as hereinafter provided.

2. *Preparation of petition.*] That previously to the consideration of any such petition notice of the resolution of such justices shall be advertised in a London Newspaper, and also in some newspaper circulating in the county to which the liberty is proposed to be united, for three successive weeks, and shall also (unless the clerk of the peace of the county and of the liberty is the same person) be given to the clerk of the peace of the county, in case the resolution shall be the resolution of the justices of the liberty, or, in case the resolution shall be the resolution of the justices of the county, to the clerk of the peace of the liberty, and such notice shall be so advertised and given by the clerk of the peace of the county or liberty the justices of which shall come to the resolution, and shall mention the time and place when the petition for the union will be taken into consideration by the justices of the county or liberty coming to the resolution; and the said justices shall confer with any person who shall attend the meeting of the said justices for that purpose, and who shall appear to the said justices to be interested in the matter of the said petition, touching the said petition, and such other cir-



cumstances as shall appear to the said justices fit to be considered in effecting a union of the liberty with the county under the provisions of this Act; and such petition (which shall set forth the reasons upon which the same is founded, and also the terms and conditions upon or under which it is desired that the union shall take place, and particularly the mode in which the gaol and other property of the liberty, and the debt, if any, charged on the rates of such liberty, is proposed to be dealt with, and the nature and amount of compensation, if any, to be paid to any custos rotulorum, hereditary sheriff, clerk of the peace, coroner, treasurer, or other person holding or entitled to any permanent franchise or office in or belonging to the said liberty, and in what manner such compensation is proposed to be raised and paid, and such other matters and things as are proper to be provided for on the union of the liberty with the county) shall be certified to Her Majesty under the hand of the chairman of the justices present when such petition shall be agreed to.

3. *Union of liberty with county.*] That where petitions as aforesaid, as well of the justices of the county as of any liberty situate therein, shall be certified as aforesaid to Her Majesty, it shall be lawful for Her Majesty, if she shall think fit, with the advice of her privy council, after taking into consideration such petitions and also any other petition which may be presented to her by any person concerning any proposed union of the liberty with the county, to order the union of such liberty with the county, from such time, upon such terms and conditions, and subject to such restrictions, and generally in such manner, as to Her Majesty, with the advice aforesaid, shall seem expedient; and it shall be lawful for Her Majesty, with the advice aforesaid, to constitute such liberty a separate hundred, or to annex the same to any existing hundred or in parts to existing hundreds of such county; and every such order, hereinafter referred to as the "order of union," shall be published in the *London Gazette*.

4. *After union no separate commission of the peace to issue for liberty.—Sessions for the county to have jurisdiction in liberty.—Inhabitants of liberty to serve on juries for county.*] That from and after the time mentioned in any such order of union for the union of any liberty with the county in which it is situate, under the provisions of this Act, save so far as otherwise directed by such order, and subject to the provisions thereof, such liberty shall be taken to be in all respects part of the county to which the same is united under such order, and shall be subject to the jurisdiction of the justices of such county, and the jurisdiction and powers of any justices under any separate commission of the peace theretofore issued for such liberty shall cease, and no separate commission of the peace shall be issued and no separate sessions of the peace shall be holden for any such liberty, any law, statute, letters patent, grant, or charter whatsoever to the contrary notwithstanding; and the sessions to be holden in and for the county shall have full jurisdiction over all things cognizable by the sessions for the liberty, and the caption and venue in every indictment or other proceeding shall be in the county, without naming the liberty; and the inhabitants of the liberty shall, being duly qualified to serve upon juries under the



provisions of an Act passed in the sixth year of the reign of His late Majesty King George the Fourth, intituled "An Act for consolidating and amending the Laws relating to Jurors and Juries," be returned and be liable to serve on juries at the sessions of the peace for the county.

5. *Gaol of liberty to become gaol of county.*] That unless otherwise directed by the order of union, and subject to the provisions thereof, the gaol belonging to the liberty shall upon the union of the liberty with the county be a common gaol for the county, and shall be under the control and management of the justices of such county; and all laws and enactments in force with respect to a county gaol, or to persons imprisoned in a county gaol, shall be in force with respect to any and every gaol at the time of such union belonging to the liberty, and to the persons imprisoned therein.

6. *Prisoners to be tried at sessions for united county and liberty, and, where necessary, at assizes.*] That save where otherwise directed by the order of union, and subject to the provisions and directions thereof, every person who shall at the time of the union stand committed to take his trial at any court of gaol delivery, general or quarter sessions of the peace, for the liberty, charged with any offence which the justices of the liberty would have had jurisdiction to try, shall take his trial at the next court of quarter sessions for the county to which such liberty is united, if the offence is cognizable by a court of quarter sessions, and if not, then before the judges of oyer and terminer and gaol delivery at their next circuit; and all persons bound by recognizance to prosecute and give evidence against such offenders shall be bound to appear to prosecute and give evidence at the court at which such offenders shall be tried as aforesaid; and all such recognizances, and all depositions relating to such charges, shall be transmitted to the proper officer of the court where such offenders shall be tried; and the sheriff, under-sheriff, gaolers, and other officers of the county in which such offenders shall be so tried are hereby authorized and required in every such case to receive every prisoner delivered into the custody of the sheriff or removed to the gaol of the county, and him safely keep until delivered in due course of law; and the judges of assize and others named in Her Majesty's commission of oyer and terminer and gaol delivery, or the justices of the county, as the case may be, in which such offenders shall be tried, are hereby authorized and required to hear and determine all such cases, and to order the payment of the usual and fit expenses of the prosecutors and witnesses, and all other costs and expenses which in like case may be directed to be paid by order of court.

7. *Records to be delivered to custos rotulorum of county.*] That the custos rotulorum of every county to which any liberty shall be united under the provisions of this Act shall, unless otherwise directed by the order of union, become the keeper of records of the court of sessions of the peace of the said liberty, and the records of the said court shall be delivered to such custos rotulorum accordingly.

8. *Treasurer of liberty to pay over monies to treasurer of county.*] That, save where otherwise directed by the order of union, and subject to the provisions of such order, the treasurer for the liberty



shall, upon the union of the liberty with the county, pay over to the treasurer of the county all monies in his hands of or belonging to the liberty; and the treasurer of the county shall stand possessed of and shall apply all such monies for such purposes as the order of union shall direct, and in default of such direction, as part of the county stock; and, subject to the provisions of the order of union, all such sums as may be required to be raised and paid, for compensation or otherwise, under such order, and may not be paid out of the said monies in the hands of the treasurer of the liberty, shall be defrayed out of the county stock, and shall be raised and paid at such times and in such manner as the justices of the county in general or quarter sessions assembled shall direct.

9. *Interpretation of terms.*] That in this Act the word "liberty" shall be taken to mean also division of a county, town and county, and soke; and the word "gaol" shall be taken to mean also prison or house of correction; and in describing any person or thing any word importing the singular number shall be construed to mean also several persons or things respectively, unless there be something in the subject or context repugnant to such construction.

10. *Boroughs within liberties.*] Provided, that where any borough corporate or other corporate place, or any part thereof, is situate within any liberty united with any county under this Act, such borough or place, or part thereof, as aforesaid, from the time of such union (save as otherwise directed by the order of union), shall be deemed to be within and part of such county for all purposes for which before such union it was within and part of such liberty; and such borough or place, or part thereof, and such county respectively, in relation to each other and the inhabitants and others in respect thereof, shall have and be subject to the like rights, privileges, liabilities, and jurisdiction which such borough or place, or part thereof, and such liberty respectively, had and were subject to before such union, and, save as aforesaid, no borough or other corporate place named in either of the schedules to the Act of the sixth year of King William the Fourth, "to provide for the Regulation of Municipal Corporations in England and Wales," or to which the provisions of that Act have been extended by charter or Act of Parliament, shall be subject to the provisions of this Act.

11. *Act not to extend to Southwark, Scotland, or Ireland.*] That this Act shall not extend to the borough of Southwark, to Scotland, or Ireland.

12. *Act may be amended, &c.*] That this Act may be amended or repealed by any Act to be passed in this session of parliament.

*By stat. 19 & 20 Vict. c. 69.--An Act to render more effectual the Police in Counties and Boroughs in England and Wales.:*—

Sect. 1. *Where a constabulary is not already established for the whole of a county, the justices in general or quarter sessions to cause the same to be established; if already established in part of a county, then for the residue of such county.*] In every county in which a constabulary has not been already established for the whole of such county under the said Acts of the second



and third and third and fourth years of Her Majesty, or either of them, the justices of such county at the general or quarter sessions holden next after the first day of December one thousand eight hundred and fifty-six, shall proceed to establish a sufficient police force for the whole of such county, or where a constabulary is already established in part of such county, then for the residue of such county, and for that purpose shall declare the number of constables they propose should be appointed, and the rates of pay which it would be expedient to pay to the chief and other constables, and shall report such their proceedings to one of Her Majesty's principal secretaries of state; and upon the receipt from the secretary of state of such rules as are mentioned in section three of the said Act of the second and third years of Her Majesty, all the provisions of the said Acts of the second and third and third and fourth years of Her Majesty shall take effect and be applicable in relation to such county, in like manner as by the said Acts provided, upon the adoption of such Acts for any county by the justices thereof, and the receipt of such rules as aforesaid from the secretary of state, subject nevertheless to the amendments contained in this Act.

2. *Not to apply to counties where parties have sent to secretary of state a report as required by 2 & 3 Vict. c. 93, for the establishment of a police force.*] Provided always, that the enactment hereinbefore contained shall not apply to any county where, before the said general or quarter sessions holden next after the first day of December, the justices of the peace of such county have sent to the secretary of state such report as is required by the said Act of the second and third years of Her Majesty, in order to establish a police for the whole of such county, or for such residue thereof as aforesaid (as the case may be), and the proceedings upon and in relation to such report, and consequent thereupon, shall and may be had and continued according to the said Acts as amended by the enactments herein contained.

3. *Where constabularies have been established in divisions of a county, such establishments to be consolidated into one county police force.*] In any county where, after the establishment under the said Acts of Her Majesty or either of them, of a constabulary for any division or divisions thereof, constables have been or shall be appointed under such Acts and this Act, or any of them, for the residue of the county, or for divisions constituting together such residue, there shall be one general county police establishment, and any divisional police establishment or establishments which may have been constituted in such county shall be consolidated with and form part thereof, and a chief constable shall be appointed for such county, in like manner and with the like powers as in any case where a police force is established for the whole county in the first instance.

4. *Her Majesty may, by order in council, require separate Police districts to be constituted in counties.*] In case it appear to Her Majesty in council, upon the petition of persons contributing, or who on the establishment of a constabulary under the said Acts of the second and third and third and fourth years of Her Majesty, or this



Act, will be liable to contribute, to the police rate of any county, that a distinction should be made in the number of constables to be appointed to keep the peace in different parts of such county, it shall be lawful for Her Majesty, by the advice of her privy council, to order and require the justices of such county to exercise the powers given by the said Act of the third and fourth years of Her Majesty, for the division of such county into police districts; and the said justices shall thereupon, in manner directed by such Act, and subject to such approval as therein mentioned, divide such county into such police districts as shall appear to them most convenient, and declare the number of constables which ought to be appointed for each police district; and the extent of such districts, and the number of constables appointed for each, may be altered as in the said Act provided: and the expenses to be defrayed by each such police district shall be ascertained in the manner provided by the said last-mentioned Act, and the police rates assessed and levied therein accordingly; provided, that notice of every such petition, and of the time when it shall please Her Majesty to order that the same be taken into consideration by Her privy council, shall be published in the *London Gazette* one month at least before such petition shall be considered.

5. *Her Majesty in council, on representations from boroughs, may arrange terms of consolidation with counties.—Power to Her Majesty to vary such terms from time to time.*] In case it be represented to one of Her Majesty's principal secretaries of state by the council of any borough, that application has been made by such council to the justices of any county in or adjoining to which such borough is situate, to consolidate the police of such county and borough in the manner provided by the fourteenth section of the said Act of the third and fourth years of Her Majesty, and that such consolidation has not been effected, it shall be lawful for such principal secretary of state to inquire into the terms of consolidation proposed, and to report thereon to Her Majesty in council; and it shall be lawful for Her Majesty, with the advice of Her privy council, to fix the terms and conditions and date upon and from which such consolidation shall take effect, and thereupon the provisions of such last-mentioned Act shall become applicable as if such consolidation had been effected by an agreement made under the said section, save so far as such provisions relate to the determination of such agreement; and it shall be lawful for Her Majesty, with the advice of her privy council, at any time and from time to time to vary the terms of any such consolidation, or at any time to determine such consolidation upon such terms as to Her Majesty in council may seem just.

6. *County constables to have the like powers, &c. in boroughs as borough constables have in the county.*] The constables of every county appointed under the said Acts of the second and third and third and fourth years of Her Majesty or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such



borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

7. *Constables to perform duties connected with the police as directed by justices or watch committees.*] The constables acting under the said Acts of the second and third and third and fourth years of Her Majesty, the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require.

8. *Constable not to receive to his own use fees for performance of his duties.*] It shall not be lawful for any constable acting under the said Acts of the second and third and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts (other than a local constable appointed under the said Act of the third and fourth years of Her Majesty), to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable; but this enactment shall not extend to prevent the receipt by any such constable of any fee or other payment legally payable which he may be liable to account for and pay over to the treasurer of the county or borough, or otherwise for the use of the county or borough, or which may be payable to, or applied in aid of any police superannuation fund established or to be established in any borough, under the provisions of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, or of any local or other Act of parliament.

9. *Borough constables disqualified from voting at certain elections.*] No head or other constable already appointed or hereafter to be appointed for any borough under the said Act of the fifth and sixth years of King William the Fourth, except special constables, shall, during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, be capable of giving his vote for the election of any person to any municipal office in such borough, or for the election of a member to serve in parliament for such borough or any county in or to which such borough is situate, either wholly or in part, or adjoins, or for any borough within any such county, nor shall any such constable, by word, message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough, or to be a member to serve in parliament for any such borough or county; and if any such constable shall offend therein, he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one half of the sum recovered shall be paid to the person suing for the same,



and the other half to the treasurer of the borough : provided always, that nothing herein contained shall subject any constable to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

10. *Power to grant out of the superannuation fund gratuities to incapacitated constables who have not served fifteen years.*] It shall be lawful for the justices of any county in general or quarter sessions assembled, if they think fit, upon the recommendation of the chief constable, and upon his certifying that any constable belonging to the police force of the county, who has not served so long as fifteen years, is incapable from infirmity of mind or body to discharge the duties of his office, to order that such constable shall receive out of the superannuation fund mentioned in the said Act of the third and fourth years of Her Majesty such sum in gross as a gratuity upon his retirement as to the said justices may seem proper.

11. *Deficiency in superannuation fund to be made up out of police rate.*] If at any time the superannuation fund mentioned in the said Act of the third and fourth years of Her Majesty be insufficient (otherwise than by reason of any default of any treasurer or other person intrusted with the custody or management thereof) to pay the superannuation or retiring allowances and gratuities payable thereout, the amount which such fund shall from time to time be insufficient to pay shall be defrayed by the police rate, and, where the county is divided into police districts, shall be defrayed by the several districts as parts of the local expenditure thereof, rateably in proportion to the number of constables appointed for each such district respectively.

12. *Gratuities may be granted to officers superseded by the county police.*] It shall be lawful for the magistrates in general or quarter sessions assembled, if they so think fit, to grant gratuities to such officers as may be removed from their appointments in consequence of the duties of such officers being transferred to persons belonging to the police establishment.

13. *Power to grant superannuations to chief constables, to be paid out of the police rate.*] It shall be lawful for the justices of any county in general or quarter sessions assembled, if they see fit, to grant to any chief constable of the county on his ceasing to be such chief constable, such annual sum by way of superannuation allowance as they think fit ; and such superannuation allowance shall be paid out of the police rate of the county, and shall in the case of a county which is divided into police districts, be deemed part of the general expenditure, and be defrayed accordingly : provided always, that no such allowance shall be granted to any chief constable under sixty years of age, unless the said justices be satisfied that he is incapable from infirmity of mind or body to discharge the duties of his office ; and section eleven of the said secondly recited Act as to the proportionate amount of the superannuation allowance of any petty constable, shall apply to the superannuation allowance to be granted to any chief constable.

14. *Annual statement as to crime in counties and boroughs to be furnished to secretary of state.*] The justices of every county, and the watch committee of every borough, shall, in the month of October



in every year, transmit to one of Her Majesty's principal secretaries of state a statement, in such form as one of the said secretaries of state may from time to time direct, for the year ending the twenty-ninth day of September then last, of the number of offences reported to the police within such county or borough respectively, the number of persons apprehended by the police, the nature of the charges against them, the result of the proceedings taken thereupon, and any other particulars relating to the state of crime within such county or borough which such justices or watch committee may think it material to furnish, and a classified abstract of all such reports and returns shall be annually prepared and laid before parliament. *See the form of this statement, post p. 55.*

15. *Power to Her Majesty to appoint inspectors for inquiring into state and efficiency of the police in counties and boroughs, &c.]* It shall be lawful for Her Majesty, by warrant under Her royal sign manual, to appoint during Her Majesty's pleasure three persons as inspectors under this Act, to visit and inquire into the state and the efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of Her Majesty's principal secretaries of state, who shall cause such reports to be laid before parliament; and such inspectors shall be paid, out of such money as may be provided by parliament for the purpose, such salaries and allowances as shall be determined by the commissioners of Her Majesty's treasury.

16. *On certificate of secretary of state that an efficient police has been established in any county or borough, one fourth of the charge for pay and clothing to be paid by the treasury.]* Upon the certificate of one of Her Majesty's principal secretaries of state, that the police of any county or borough established under the provisions of the said Acts and this Act, or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth of September then last past, it shall be lawful for the commissioners of Her Majesty's treasury to pay from time to time, out of the monies provided by parliament for the purpose, such sum towards the expenses of such police for the year mentioned in such certificate as shall not exceed one fourth of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under the nineteenth section of the said Act of the third and fourth years of Her Majesty; provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the justices of such county, or to the watch committee of such borough, who may address any statement relating thereto to the secretary of state; and in every case in which such certificate is withheld, a statement of the grounds on which the secretary of state has withheld such certificate, together with any such statement of



the justices or watch committee as aforesaid, shall be laid before parliament.

17. *But not to any borough where population does not exceed 5,000, and not consolidated with police of a county.*] No such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under the said Act of the third and fourth years of Her Majesty, or this Act, the population of which borough according to the last parliamentary enumeration for the time being does not exceed five thousand.

18. *Provisions relating to borough police to be applicable to the police in the places referred to in section 20 of 3 & 4 Vict. c. 88, until discontinued.*] Until the constables or watchmen appointed in and for any parish, town, or place under the Act passed in the session holden in the third and fourth years of King William the Fourth, chapter ninety, or under any local Act authorizing the appointment of constables or watchmen, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen, are discontinued as a separate force in manner provided by section twenty of the said Act of the third and fourth years of Her Majesty and by this Act, all the provisions of this Act applicable to the constables of any borough acting under the said Act of the fifth and sixth years of King William the Fourth shall be applicable to the constables or watchmen appointed under the said Act of the third and fourth years of King William the Fourth, or under such local Act as aforesaid, in and for such parish, town, or place, and until such discontinuance all the provisions of this Act applicable to the watch committee of a borough shall be applicable to the inspectors, commissioners, or other persons having the appointment of constables or watchmen in and for such parish, town, or place, and the police of such parish, town, or place shall be visited and inquired into by the inspectors under this Act; and the provision in this Act enabling the commissioners of Her Majesty's treasury to make payment towards the expenses of the police of a borough having a population exceeding five thousand, shall, until such discontinuance, extend to the police of such parish, town, or place as aforesaid having the like population.

19. *The separate police in such places (having a population of 15,000) not to be superseded without the authority of the secretary of state.*] Provided, that where any such parish, town, or place, having such constables or watchmen as aforesaid, contains, according to the last parliamentary enumeration, a population of fifteen thousand persons or upwards, the chief constable of the county in which such parish, town, or place is situate shall not give notice, under the said section twenty of the said Act of the third and fourth years of Her Majesty, that he is ready to undertake the charge of such parish, town, or place, without the previous authority of one of her Majesty's principal secretaries of state; and notice of the intention of the chief constable to apply to the secretary of state for such authority shall be published by such chief constable in such parish, town, or place, in manner directed by the said section twenty respecting the publi-



cation of the notice therein mentioned, fourteen days at least before such application is made.

20. *No agreement under section 14 of 3 & 4 Vict. c. 88, to be put an end to without the sanction of secretary of state.*] No agreement made under section fourteen of the said Act of the third and fourth years of Her Majesty shall be put an end to without the sanction of one of Her Majesty's principal secretaries of state.

21. *Section 24 of 3 & 4 Vict. c. 88, repealed*] Section twenty-four of the said Act of the third and fourth years of Her Majesty shall be repealed.

22. *Power to justices to purchase station-houses or strong rooms provided under 3 & 4 Vict. c. 88, and cause the same to be paid for out of the county rates.*] Where a station-house or strong room shall have been provided under the said Act of the third and fourth years of her Majesty, section twelve, for any police district or division within any county in which the provisions of the said Act of the second and third years of Her Majesty, have not been put in force throughout the whole of such county before the passing of this Act, and the cost of such station or strong room has been incurred out of or now remains wholly or in part chargeable on the police rate for such police district or division, the justices of the peace for the county wherein such police district or division is situate, at any quarter sessions to be held after the passing of this Act, shall or may purchase such station-house or strong room for such sum of money as may be determined by such justices, and hold the same for and on behalf of the county or riding for the purposes of this Act, and pay the purchase monies for the same out of the general county rate for the said county; and where the cost of erecting such station-house or strong room shall at the passing of this Act be chargeable by way of mortgage either wholly or in part on the police rates for such police district or division, it shall be lawful for the said justices to transfer such charge from the police rates leviable in such police district or division to and continue such charge upon the county rate of the county in which such police district or division shall be situate; and the police rates of the said police district or division shall be thenceforth discharged from all future payments in respect of the said station-house or strong room; and all mortgages or other instruments then operating by way of charge on the said police rates in respect of such station-house or strong room shall be thereafter deemed to be charges on the general county rate of the said county, in the same manner as if the same had been originally charged on such county rate, and such station-house or strong room shall thenceforth be the property of the said county for the purposes of this Act.

23. *Provisions of 8 & 9 Vict. c. 18, for purpose of purchases of station-houses, &c. by justices, incorporated with this Act.*] For facilitating the purchase of lands and tenements for the purposes mentioned in section twelve of the said Act of the third and fourth years of Her Majesty, the provisions of "The Lands Clauses Consolidation Act, 1845," except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the said Act of the third and fourth years of Her Majesty and this Act; and the expression "the promoters of the undertaking," in the said Lands Clauses Consolidation Act, shall for



the purposes of such incorporation mean the justices of the peace of any county in general or quarter sessions assembled; and the powers of providing station-houses and strong rooms contained in sections twelve and thirteen of the said Act of the third and fourth years of Her Majesty and this Act shall extend to authorize the providing of such station-houses and strong rooms within any borough lying within or adjoining to the county for which the same may be provided.

24. *Provisions of 7 Geo. 4, c. 18, as to disposal of unnecessary station-houses, &c. extended to this Act.*] The Act of the seventh year of the reign of King George the Fourth, chapter eighteen, "To authorize the Disposal of unnecessary Prisons in England," shall extend to and include all station-houses, lock-up houses, strong rooms, and the sites thereof, and all other lands and tenements whatsoever which may at any time be vested in the justices of the peace of any county, or in any persons in trust for them, for the purposes of the police, and which in the judgment of such justices shall for any reason whatever have become unnecessary.

25. *Powers of 15 & 16 Vict. c. 31, to continue in force in the county of Chester, until police shall be established under this Act.*] And whereas in the county of Chester a constabulary force is now maintained and regulated under "The Cheshire Constabulary Act, 1852:" The said Cheshire constabulary force shall continue to act in their respective appointments, and shall be subject to the same authorities as heretofore; and "The Cheshire Constabulary Act, 1852," shall continue in force until a day to be notified by the chief constable to be appointed for the said county of Chester, by writing under his hand to the justices for the said county in general quarter sessions assembled, as that on which he will be ready to take the charge of the said county, which notice shall be published within the said county in such manner as shall seem fit to the said justices; and upon the day so named the said Cheshire constabulary force shall be discontinued, and the powers and provisions of "The Cheshire Constabulary Act, 1852," shall cease and determine: Provided always, that any rate authorized by "The Cheshire Constabulary Act, 1852," and duly made previously to the day on which the chief constable shall undertake the charge of the county of Chester as aforesaid, shall be levied and collected in the same manner as if this Act had not been passed; and all sums of money collected and received and not then applied, and to be collected and received as and for rates levied under the powers and authorities of "The Cheshire Constabulary Act, 1852," shall be applied, after defraying all charges to which the same shall be liable, in and towards payment of the police rates to be levied under this Act and the said Act of the third and fourth years of Her Majesty, upon the respective townships and places within the hundreds or divisions of hundreds in the said county of Chester, by which hundreds or divisions of hundreds such sums of money shall have been respectively contributed, and shall be apportioned as nearly as may be rateably according to the proportions thereof respectively contributed by such townships or places; and the application of such monies by the clerk of the peace for the said county of Chester, certified and allowed by any two justices of the county, shall be binding and conclusive: Provided also, that in case the rates levied and collected under "The Cheshire Constabulary



Act, 1852," within any such hundred or division, shall be insufficient to defray the charges to which the same shall be liable, the deficiency shall be paid out of the rates to be levied within the said county of Chester under this Act and the said Act of the third and fourth years of Her Majesty.

26. *If two chief constables appointed in Cheshire, the preceding section to apply to district of each chief constable.]* Provided further, that in case two chief constables shall be appointed for the said county of Chester under section four of the said Act of the second and third years of Her Majesty, the last preceding section of this Act shall be read and construed as applicable to the separate district of each of such two chief constables, and as if the same had been specially enacted with reference to such separate district instead of the whole county.

27. *Provision as to superannuation fund under 15 & 16 Vict. c. xxxi.]* The superannuation fund formed under "The Cheshire Constabulary Act, 1852," shall (after repayment thereof to such officers of the said Cheshire constabulary force who may not be appointed officers under this Act, and the said Acts of the second and third and third and fourth years of Her Majesty, of such sums of money as shall have been deducted from their respective salaries or contributed by them respectively to such superannuation fund, which repayments shall be made by the treasurer of such fund accordingly), form part of the superannuation fund to be formed in the said county of Chester under the provisions of the said Act of the third and fourth years of Her Majesty; and any allowance which the justices of the said county of Chester have, by virtue of the said Cheshire Constabulary Act, 1852, ordered to be paid out of the superannuation fund under that Act, shall thereafter be paid out of the superannuation fund to be formed under the provisions of the said Act of the third and fourth years of Her Majesty.

28. *As to superannuations to police officers who have served under 15 & 16 Vict. c. xxxi, and appointed under this Act.]* The service of any officer in the said Cheshire constabulary force who shall be appointed an officer under this Act and the said Acts of the second and third and third and fourth years of Her Majesty, shall be considered an equivalent to a service under such Acts, for the purpose of estimating the allowance to be paid to any such officer out of the superannuation fund to be formed in the said county of Chester under the said Act of the third and fourth years of Her Majesty.

29. *Police rates in the county of Chester made liable to annuity paid to the widow of an officer who died in the execution of his duty.]* An allowance which the justices of the said county of Chester have, by virtue of "The Cheshire Constabulary Act, 1852," ordered to be paid to the widow of a constable who died in the execution of his duty, out of the rates to be levied and made on the hundred of Wirral under that Act, shall be paid out of and be chargeable on the rates to be levied within the said county of Chester by virtue of this Act and the said Act of the third and fourth years of Her Majesty, or on such one of the said rates, if such there are, as the justices of the said county in general quarter sessions assembled shall from time to time order and direct.

30. *Interpretation of certain terms.]* The word "county" shall



in this Act have the same meaning as is assigned to such word in the said Act of the third and fourth years of Her Majesty, except as to the soke or liberty of Peterborough, in the county of Northampton, which for all purposes of this and the several recited Acts shall be deemed and taken to be a county of itself; and the several provisions in this Act and the said recited Acts shall apply and operate in, for, and concerning the said soke or liberty accordingly; and the word "borough" shall mean any city, borough, or place incorporated under the provisions of the said Act of the fifth and sixth years of King William the Fourth, or which has otherwise become subject to the provisions of the same Act; and every part of the cinque ports, two ancient towns of Winchelsea and Rye, and their several members and liberties, which is not within the municipal boundaries of a place named in one of the schedules (A.) and (B.) to the last-mentioned Act, shall for the purposes of the said Acts of Her Majesty and this Act be deemed to form part of the county in which the same is situate, and shall be dealt with, under the said Acts of Her Majesty and this Act, as a liberty which, under the said Acts of Her Majesty, forms part of a county, notwithstanding it may be a member or liberty of a place named in one of the said schedules.

31. 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88, and this Act to be as one.] The said Acts of the second and third and of the third and fourth years of Her Majesty and this Act shall be construed together as one Act.

32. *Extent of Act.*] Nothing in this Act shall extend to any part of the metropolitan police district or to the city of London.

*The following is the form of the statement required to be made by the Justices of Counties and the Watch Committees in Boroughs, to the Secretary of State in October in every year, as required by Statute 19 & 20 Vict. c. 69, s. 14, ante p. 49.*

County of —

STATEMENT made to Her Majesty's principal secretary of state for the year ended the 29th September, 185 , pursuant to 19 & 20 Vict., c. 69.

Presented to the Court of Quarter Sessions, — Chairman.  
— Chief Constable. — day of October, 185 .

#### INSTRUCTIONS.

In the case of boroughs amalgamated with counties for police purposes all the particulars required in the following tables, with respect to such boroughs, will be included in the county return, and separate returns need not be made by the borough authorities to the home secretary.

Persons taken into custody and immediately released by the police, should not be included in these returns; but only those persons who are detained, and the charges against them determined by a justice.

Table 1. *Police establishment and charges.*] Any constables, who are employed in the duties of clerk, station-house keeper, or other office, if not holding any rank in the police, should be classed with the rank to which they most closely approximate in pay. The superintendent, acting occasionally as deputy chief constable, should be classed as superintendent.







with summarily (except where a commitment for trial ensues). Under the "disposal of the persons apprehended" the total number of persons apprehended must be shown and accounted for. Persons committed for trial and afterwards bailed for trial must be entered only under one of those heads.

Table 5. *Offences determined summarily.*] The numbers committed or otherwise disposed of under the justices' order on conviction should correspond with the numbers convicted, and the numbers convicted and discharged with the total proceeded against. Therefore, when a sentence of imprisonment is combined with whipping, fine, order to find sureties, &c., it must be entered as imprisonment only: and on a commitment to a reformatory school, which is the chief sentence, the previous short imprisonment, which forms part of the sentence, should not be inserted.

for the Year ended 29th September, 185 .

| COST OF THE ESTABLISHMENT. |                                     |                             |                                 |                              |                                                  |                              |              |
|----------------------------|-------------------------------------|-----------------------------|---------------------------------|------------------------------|--------------------------------------------------|------------------------------|--------------|
| Salaries and Pay.          | Allowances and Contingent Expenses. | Clothing and Accoutrements. | Superannuations and Gratuities. | Horses, Harness, Forage, &c. | Station-house Charges, Printing, Stationery, &c. | Other Miscellaneous Charges. | TOTAL COSTS. |
| £ s. d.                    | £ s. d.                             | £ s. d.                     | £ s. d.                         | £ s. d.                      | £ s. d.                                          | £ s. d.                      | £ s. d.      |
|                            |                                     |                             |                                 |                              |                                                  |                              |              |

proceeded against in the Year ended 29th September, 185 .

| CLASS OF PERSONS PROCEEDED AGAINST SUMMARILY. |    |              |                                                                  |    |                        |    |                                                 |    |                          |    |                    |    |        |    |
|-----------------------------------------------|----|--------------|------------------------------------------------------------------|----|------------------------|----|-------------------------------------------------|----|--------------------------|----|--------------------|----|--------|----|
| Known Thieves.                                |    | Prostitutes. | Vagrants Tramps and others without visible means of subsistence. |    | Suspicious Characters. |    | Habitual Drunkards (not under preceding heads.) |    | Previous good character. |    | Character unknown. |    | TOTAL. |    |
| M.                                            | F. |              | M.                                                               | F. | M.                     | F. | M.                                              | F. | M.                       | F. | M.                 | F. | M.     | F. |
|                                               |    |              |                                                                  |    |                        |    |                                                 |    |                          |    |                    |    |        |    |

within the District of the Police, in the Month of September, 185 , they frequent.

PERSONS AT LARGE.

NUMBER OF HOUSES OF BAD CHARACTER.

| Vagrants and Tramps. |                     | TOTAL.          |                     | Houses of Receivers of Stolen Goods. | Resort of Thieves and Prostitutes. |             |               |                        | Brothels and Houses of ill Fame. | Tramps' Lodging-houses. | TOTAL. |
|----------------------|---------------------|-----------------|---------------------|--------------------------------------|------------------------------------|-------------|---------------|------------------------|----------------------------------|-------------------------|--------|
| Under 16 Years.      | 16 Years and above. | Under 16 Years. | 16 Years and Above. |                                      | Public-houses.                     | Beer-shops. | Coffee-shops. | Other suspected houses |                                  |                         |        |
| M. F.                | M. F.               | M. F.           | M. F.               |                                      |                                    |             |               |                        |                                  |                         |        |
|                      |                     |                 |                     |                                      |                                    |             |               |                        |                                  |                         |        |



4. *Constables on Canals and Navigable Rivers.*

*By stat. 3 & 4 Vict. c. 50.—An Act to provide for keeping the Peace on Canals and Navigable Rivers,—it is enacted :—*

Sect. 1.—Whereas robberies and other outrages are frequently committed on canals and navigable rivers throughout England and Wales, and it is expedient that power be given to appoint constables for better keeping the peace, and for the prevention and detection of crime, along the line of such canals and rivers, and in the neighbourhood thereof: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for any two justices of the peace, and for the watch committee of any incorporated borough, within their several jurisdictions, on the application of the committee or board of directors acting in the management of the affairs of the company of proprietors of any canal or navigable river, or of any clerk or agent of any such company duly authorized by such committee or board of directors, to appoint so many persons as they shall think fit from among those who shall be recommended to them for that purpose by such company of proprietors, clerk, or agent, to act as constables on and along such canal or river; and every person so appointed shall take an oath, or make a solemn declaration in the form or to the effect following, (that is to say,)—

“I, *A. B.*, having been appointed a constable to act upon and along the [name the canal or navigable river] under the provisions of [here insert the title of this Act] do swear That I will well and truly serve our Sovereign Lady the Queen in the said office of constable, without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept, and prevent all offences against the peace; and that while I continue to hold the said office, I will to the best of my skill and knowledge discharge the duties thereof faithfully according to law. So help me God.”

Such oath or declaration to be administered by any one such justice; and every one so appointed, and having taken such oath or made such declaration as aforesaid, shall have full power to act as constable for the preservation of the peace, and for the security of persons and property against felonies and other unlawful acts on such canal or river, and the towing paths and works belonging thereto, and on and within any railways, tram-roads, wharves, quays, locks, docks, landing places, warehouses, lands, and premises, belonging to any such company, and in all places not more than one quarter of a mile distant from either bank of such canal or river, or from such railways, and shall have all such powers, protections, and privileges for the apprehending of offenders, as well by night as by day, and for doing all things for the prevention, discovery, and prosecution of felonies and other offences, and for keeping the peace which any constable duly appointed has within his constablewick: provided always, that such power shall not extend to authorize any such person to act as such constable within the metropolitan police district, or the city of London and the liberties thereof, or in any



places beyond the banks, towing paths, and other the premises belonging to such company, as may be situate within any other city, or any incorporated borough, anything in this Act contained to the contrary notwithstanding.

2. It shall be lawful for any two justices, or the watch committee of any incorporated borough, to dismiss any such constable who shall act within their several jurisdictions, or for the company of proprietors of any such canal or river for which any such constables shall be appointed, or for any clerk or agent of such company duly authorized by the committee or board of directors of such companies, to dismiss any such constable from his office of constable; and upon every such dismissal all powers, protections, and privileges belonging to any such person by reason of such appointment shall wholly cease; and no person so dismissed shall be capable of being again appointed or acting as a constable for the same canal or river, without the consent of the authority by which he was dismissed.

3. And be it enacted, That it shall be lawful for every such company of proprietors to pay to every such constable out of the monies and effects of the company, such salary or allowances, and at such times and in such manner as the company shall think fit.

4. Every constable who shall be guilty of any neglect or breach of duty in his office of constable, shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary due to such offender, or, in the discretion of the magistrate before whom such offender shall have been convicted, such offender may be imprisoned in the gaol or house of correction for the county or place in which such offence shall have been committed, with or without hard labour, for any time not more than one calendar month.

5. Every constable who shall be dismissed from, or shall cease to hold his office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and all other necessities which have been supplied to him for the execution of his duty, to such person, and at such time and place, as shall be directed by the company on whose recommendation he shall have been appointed, or by any clerk or agent of such company, duly authorized by the company to receive the same, shall be liable to be imprisoned in any goal or house of correction as aforesaid, with or without hard labour, for any time not exceeding one calendar month; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize, to the use of such company, all the clothing and accoutrements, appointments, and other necessities which shall not be so delivered over, wherever the same may be found.

6. Every person who shall assault or resist any constable appointed as aforesaid in the execution of his duty, or shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty not more than ten pounds, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned in any gaol or house of correction as aforesaid, with or without hard labour, for any time not more than two calendar months.

7. Every person who shall be found upon any such canal or river or in or upon any lock, dock, warehouse, wharf, quay, or bank thereof, or on board of any boat or vessel lying or being in any such



canal or river, or in any lock or dock thereunto belonging, having in his possession or under his control any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other liquors or goods, or having in his possession any skin, bladder, or other utensil for the purpose of unlawfully secreting or carrying away any such wine, spirits, or other liquors or goods, and any person who shall attempt unlawfully to obtain any such wine, spirit, or other liquors or goods, shall for every such offence be liable to a penalty not more than five pounds, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned as aforesaid, with or without hard labour, for any time not more than one calendar month.

8. Every person who shall bore, pierce, break, cut open, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors, or any case, box, sack, wrapper, package, or roll of goods, on board of any boat, vessel, or waggon, or in or upon any warehouse, wharf, quay, or bank of or belonging to any such canal or river, with intent feloniously to steal or otherwise unlawfully obtain or to injure the contents or any part thereof, or who shall unlawfully drink or wilfully spill, or allow to run to waste any such liquors, or any part thereof, shall for every such offence be liable to a penalty not more than five pounds over and above the value of the goods or liquors so taken or destroyed, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned as aforesaid, with or without hard labour, for any time not more than one calendar month.

9. It shall be lawful for every constable appointed as aforesaid, having just cause to suspect that any felony, or any other offence, contrary to the provisions of this Act, has been or is about to be committed in or on board of any boat or other vessel lying in any such canal or river, or any lock or dock thereunto belonging, to enter at all times, as well by night as by day, into and upon every such boat or other vessel, and therein to take all necessary measures for the prevention or detection of all felonies or other offences which he has just cause to suspect to have been or to be about to be committed, and to take into custody all persons suspected of being concerned in such felonies or other offences, and also to take charge of all property so suspected to be stolen or embezzled.

10. It shall be lawful for any such constable to take into custody without a warrant, any loose, idle, and disorderly person whom he shall find disturbing the public peace, or whom he shall have good cause to suspect of having committed or being about to commit, any felony, misdemeanor, or breach of the peace, or other offence, contrary to the provisions of this Act, and every person whom he shall find, between sunset and the hour of eight in the morning, lying or loitering in or upon any towing-path, or in or upon any wharf, bridge, railway, quay, landing-place, lock, dock, or upon the bank of any such canal or river, and not giving a satisfactory account of himself.

11. Any person found committing any offence punishable upon summary conviction by virtue of this Act may be taken into custody without a warrant, by any constable, or may be apprehended by the owner of the property with respect to which the offence shall be



committed, or by his servant, or any person authorized by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law; and every such constable may also stop, search, and detain any vessel, boat, cart, or carriage, in or upon which there shall be reason to suspect that any thing stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained.

12. Any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or unlawfully obtained, is hereby authorized, and if in his power is required to apprehend and detain, and, as soon as may be, to deliver such offender into the custody of a constable, together with such property, to be dealt with according to law.

13. Nothing herein contained shall be construed to prevent any person from being indicted for any indictable offence made punishable on summary conviction by this Act, or to prevent any person from being liable under any other Act or Acts, to any other higher penalty or punishment than is provided for such offence by this Act, so nevertheless that no person be punished twice for the same offence.

14. Any two justices of the peace within their several jurisdictions shall be empowered summarily to convict any person charged with any offence against this Act, on the oath of one or more witnesses, or by confession of such person, and to award the penalty or punishment herein provided for such offence.

15. In every case of the adjudication of a pecuniary penalty under this Act, and non-payment thereof, it shall be lawful for the justices before whom any offender shall have been convicted to commit such offender to any gaol or house of correction within his jurisdiction for a term not more than one calendar month, where the sum to be paid shall not exceed five pounds, and in any case not more than two calendar months, the imprisonment to cease on payment of the penalty and costs for the recovery thereof; or instead of imprisonment it shall be lawful for the justices, by warrant under their hands and seals, to order such penalty, with the reasonable costs and charges of the conviction, to be levied by distress and sale of the goods and chattles of the offender; and all such convictions and warrants shall be taken to be within the provisions of an Act passed in the fifth year of the reign of King George the Fourth, intituled An Act for the more effectual Recovery of Penalties before Justices and Magistrates on Conviction of Offenders, and for facilitating the execution of Warrants by Constables.

16. Any justice of the peace, before whom any person shall be summarily convicted for any offence against this Act, may cause the conviction to be drawn up, on paper or parchment, in the following form of words, or to the like effect (that is to say)—

|                  |                                            |
|------------------|--------------------------------------------|
| County, City, or | } Be it remembered, that on the — day of — |
| Borough of —     |                                            |
| — to wit.        |                                            |

in the year of our Lord — in the county of —  
 — A. E. is convicted before us J. J. P. and  
 J. J. P. two of Her Majesty's justices of the peace for the said



county, for that he the said *A. E.* did [here specify the offence, and the time and place when and where the same was committed, as the case may be]; and we do adjudge that the said *A. E.* shall for the said offence forfeit the sum of — and shall pay the same immediately, [or shall pay the same on or before the — day of —] to C. D., to be by him applied according to the directions of the statute in that case made and provided.

Given under our hands the day and year first above mentioned.

J. P. and J. J. P.

17. No conviction for any offence against this Act shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of Her Majesty's superior courts of record; and that no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same; and that where any distress shall be made, for levying any money by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage (if any) in an action upon the case.

18. And for the protection of persons acting in the execution of this Act, be it enacted, That all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such cause of action shall be given to the defendant one calendar month at least before the commencement of the action, and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial is had shall certify his approbation of the action and of the verdict obtained thereupon.

19. In every case of summary conviction before any justices of the peace under this Act, in which the penalty adjudged to be paid shall be more than three pounds, any person who shall think himself aggrieved by the conviction, may appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for



the county, riding, or division wherein the cause of complaint shall have arisen, provided that such person at the time of the conviction, or within forty-eight hours thereafter, shall enter into a recognizance with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices of such sessions assembled, and to pay such costs as shall be by the last-mentioned justices awarded; and it shall be lawful for the justices by whom such conviction shall have been made, to bind over the witnesses who shall have been examined in sufficient recognizances to attend and be examined at the hearing of such appeal; and that every such witness, on producing a certificate of his being so bound, under the hands of the justices, shall be allowed compensation for his time, trouble, and expenses in attending the appeal, which compensation shall be paid, in the first instance, by the treasurer of the county or riding, in like manner as in cases of misdemeanor, under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, intituled "An Act for improving the Administration of Criminal Justice in England;" and in case the appeal shall be dismissed, and the order of conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the court, shall be repaid to the treasurer of the county or riding by the appellant.

20. All the powers hereby vested in any company of proprietors of any such canal, or navigable river, may be exercised by the directors or committee of management or other body of persons, under whatever style or name they may be known, duly authorized according to the constitution of such company, to manage the affairs of such company respectively, and if there shall be no such body, or more than one such body, so that it may be doubtful by whom the said powers ought to be exercised, then by such body of persons as shall be appointed for that purpose by the proprietors at any general or special meeting of the proprietors convened for that purpose, with the like forms and notices as are required by law, in each case respectively, with regard to such meetings.

##### 5. *Constables on Railroads and Public Works.*

*By stat. 2 Vict. c. 80—An Act for Payment of Constables for keeping the Peace near Public Works,—it is enacted:—*

Sect. 1. Whereas great mischiefs have arisen by the outrageous and unlawful behaviour of labourers and others employed on railroads, canals, and other public works, by reason whereof the appointment of special constables is often necessary for keeping the peace, and for the protection of the inhabitants, and security of the property in the neighbourhood of such public works, whereby great expenses have been cast upon the public rates for counties and other districts chargeable with such expenses: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that



after the passing of this Act, whenever any special constables shall be appointed under the authority of an Act passed in the second year of the reign of His late Majesty, intituled "An Act for amending the Laws relative to the Appointment of Special Constables, and for the better Preservation of the Peace," or under the authority of an Act passed in the sixth year of the reign of His late Majesty, intituled "An Act for enlarging the Powers of Magistrates in the Appointment of Special Constables," and it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or of any liberty, franchise, city, town, or borough in England or Wales, on the oath of three or more credible witnesses, that the appointment of such special constables has been occasioned by the behaviour, or by reasonable apprehension of the behaviour, of the persons employed upon any railway, canal, or public work made or carried on under the authority of parliament, within the district or division for which such justices usually act, it shall be lawful for such justices as aforesaid at any time not exceeding one calendar month next after such appointment, to make orders from time to time upon the treasurer, or other officer who shall have the control or custody of the funds of any company making or carrying on such railroad, canal, or other public work, for the payment of such reasonable allowances for their trouble, loss of time, and expenses to such special constables who shall have so served or be then serving as to the said justices shall seem proper; and a copy of every such order shall be sent by the justice to one of Her Majesty's principal secretaries of state, and such order, if allowed by the secretary of state, shall be binding on such company, and on every such treasurer and officer thereof: provided always, that nothing herein contained shall empower any such justices to order any such allowance for any special constables at the rate of more than five shillings daily, to be paid to each special constable employed for the purposes aforesaid.

2. If it shall appear to the secretary of state that there was no need for the appointment of such special constables, or that a greater number of special constables was appointed than was needed by reason of the behaviour, or reasonable apprehension of the behaviour of the persons employed on such railroad, canal, or other public work as aforesaid, the secretary of state shall have power to disallow any such order, or to reduce the amount ordered to be paid by any such order, in such manner as to him shall seem just according to the circumstances of each case; and in such case the order shall be of no force, or shall be of force for such reduced amount only, as the case may be: and the whole of such expenses in case the whole shall be disallowed, or so much thereof as shall exceed such reduced amount if a part shall be allowed, shall be defrayed out of the public rates of such county, riding, or division, liberty, franchise, city, town, or borough, as if this Act had not been made.

3. In all cases where such treasurer or other officers as aforesaid shall refuse or neglect, during three weeks next after demand thereof, to pay such sum of money as shall have been ordered by such justices, and allowed by the secretary of state as aforesaid, it shall be



lawful for such justices to cause the same to be levied by distress upon the goods and chattels belonging to such company.

*6. Special Constables.*

*By the statute 1 & 2 W. 4, c. 41, being "An Act for amending the Laws relative to the Appointment of Special Constables, and for the Preservation of the Peace.*

Sect. 1. Two or more justices, upon information on oath that disturbances exist, or are apprehended, may appoint special constables, who are to be sworn. Notice of appointment to be given to the secretary of state and lord lieutenant.

2. Secretary of state, on representation of justices, may order persons to be sworn in, though exempt by law.

3. And may direct any lord-lieutenant to cause special constables to be sworn in, and no exemption allowed, but liable for three months only.

4. Justices may make regulations respecting special constables, and may remove them for misconduct.

5. Special constables to have the powers and be subject to the responsibilities of other constables, at common law and by statute.

6. Special constables may act in the adjoining county in certain cases.

7. Penalty for refusing to take the oath.

8. Or for neglecting to serve, &c.

9. Power to discontinue their services.

10. To deliver up staff, &c., on expiration of office.

11. Punishment for assaulting or resisting them.

12. Not to exempt them from certain offices, or give a settlement, &c.

13. Powers to justices to make allowances, &c., to special constables.

19. How protected in case of action against them. Notice of action. Plea. Tender of amends.

22. Former powers of justice not to be abridged.

*Oath of Office.*

I, *A. B.*, do swear that I will well and truly serve our Sovereign Lord the King in the office of special constable, for the parish [*or township*] of—, without favour or affection, malice, or ill-will; and that I will to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully, according to law.

So help me God.

Sect. 1. That in all cases where it shall be made to appear to any two or more justices of the peace of any county, &c. or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony has taken place, or may be reasonably apprehended, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the



preservation of the peace, and for the protection of the inhabitants and the security of property, then such justices, or any two or more justices acting for the same division or limits, may nominate and appoint, by precept in writing, under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable) residing in the parish, &c., or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices respectively shall seem fit and necessary for the preservation of the public peace, and for the protection of the inhabitants and the security of property; and the justices who shall appoint any special constables, by virtue of this Act, or any one of them, or any other justice of the peace acting for the same division or limits, are and is hereby authorized to administer to every person so appointed the oath mentioned in the Act.

2. That in any case in which any number of the householders or other persons not legally exempt from serving the office of constable, shall have been appointed by the justices in manner aforesaid to act as special constables for any such parish, &c., it shall be lawful for one of the principal secretaries of state, on the representation of any two justices, to order that the persons exempt by law from serving as special constables in such parish, &c., shall, notwithstanding such exemption, be appointed and sworn to act as special constables, as if they were not by law exempt, and such persons shall accordingly be appointed and sworn in manner aforesaid, and shall be liable to act for two calendar months only.

3. That it shall be lawful for any one of the principal secretaries of state to give direction to the lieutenant of any county to cause special constables to be appointed and sworn in manner aforesaid throughout the whole of such county, or any portion thereof, whether a hundred or hundreds, parish or parishes, or any other known division or divisions, of whatever size or denomination, and to signify, if such secretary of state shall see fit, that no person shall be excused from being so appointed and sworn in by reason of any exemption: provided always, that the persons so appointed and sworn in, whether having cause of exemption or not, shall only be called upon to act for three calendar months.

4. That the justices who appointed the constables, or the justices acting for the division or limits within which such special constables shall have been called out, at a special session of such last-mentioned justices, or the major part of such last-mentioned justices at such special session, shall have power to make such orders and regulations as may be necessary and expedient for rendering such special constables more efficient for the preservation of the public peace, and shall also have power to remove any such special constable from his office for any misconduct or neglect of duty therein.

5. That every special constable appointed under this Act shall not only within the parish, township, or place for which he shall have been appointed, but also throughout the entire jurisdiction of the justices so appointing him, have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such,



duties and responsibilities as any constable duly appointed now has within his constablewick by virtue of the common law of this realm, or of any statute or statutes.

6. That where any special constables appointed under this Act shall be serving within any county, and two or more justices of the peace of any adjoining county shall make it appear to the satisfaction of any two or more justices of the peace acting for the division or limits wherein such special constables are serving, that any extraordinary circumstances which would render it expedient that the said special constables should act in such adjoining county, then and in every such case the said last-mentioned justices are hereby authorized (if they should think fit) to order all or any of the said special constables to act in such adjoining county in such manner as to the said last-mentioned justices shall seem meet; and every such special constable, during the time that he shall so act in such adjoining county, shall have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities, as if he were acting within the parish, township, or place for which he was originally appointed.

7. That if any person, being appointed a special constable as aforesaid, shall refuse to take the oath hereinbefore mentioned when thereunto required by the justices of the peace so appointing him, or by any two of them, or by any other two justices of the peace, acting for the same division or limits, he shall be liable to be convicted thereof forthwith, before the said justices so requiring him, and to forfeit and pay such sum of money, not exceeding five pounds, as to the said justices so requiring him shall seem meet; and if any person, being appointed a special constable as aforesaid, shall neglect or refuse to appear at the time and place for which he shall be summoned, for the purpose of taking the said oath, he shall be liable to be convicted thereof forthwith before the justices so appointing him, or any two of them, or before any other two justices of the peace, acting for the same division or limits, and to forfeit and pay such sum of money not exceeding five pounds, as to the convicting justices shall seem meet: unless such person shall prove to the satisfaction of the said justices that he was prevented by sickness or such other unavoidable accident as shall, in the judgment of the said justices, be a sufficient excuse.

8. That if any person, being appointed a special constable as aforesaid, and being called upon to serve, shall neglect or refuse to serve as such special constable, or to obey such lawful orders and directions as may be given to him, for the performance of the duties of his office, every person so offending shall, on conviction thereof, before any two justices of the peace, forfeit and pay for every such neglect or refusal, such sum of money, not exceeding five pounds, as to the said justices shall seem meet, unless such person shall prove to the satisfaction of the said justices that he was prevented by sickness or such other unavoidable accident as shall, in the judgment of the said justices, be a sufficient excuse.

9. That the justices who shall have appointed any special constables under this Act are hereby empowered, or the justices acting



for the division or limits within which such special constables shall have been called out, at a special session to be held for that purpose, or the major part of such last-mentioned justices at such special session are hereby empowered to suspend or determine the services of any or all of the special constables so called out, as to the said justices respectively shall seem meet ; and notice of such suspension or determination of the services of any or all of the said special constables shall be forthwith transmitted by such respective justices to one of His Majesty's principal secretaries of state, and also to the lieutenant of the county.

10. That every such special constable shall, within one week after the expiration of his office, or after he shall cease to hold and exercise the same pursuant to this Act, deliver over to his successor (if any such shall have been appointed), or otherwise to such person and at such time and place as may be directed by any justice of the peace acting for the division or limits within which such special constable may have been called out, every staff, weapon, and other article which shall have been provided for such special constable under this Act : and if any such special constable shall omit or refuse so to do, he shall, on conviction thereof before two justices of the peace, forfeit and pay for such offence such sum of money, not exceeding two pounds, as to the convicting justices shall seem meet.

11. That if any person shall assault or resist any constable, appointed by virtue of this Act, whilst in the execution of his office, or shall promote or encourage any other person so to do, every such person shall, on conviction thereof, before two justices of the peace, forfeit and pay for every such offence any sum not exceeding twenty pounds, or shall be liable to such other punishment, upon conviction on any indictment or information for such offence, as any persons are by law liable to for assaulting any constable in the execution of the duties of his office.

12. That no person who shall be appointed a special constable, or who shall act as such under the provisions of this Act, shall by reason thereof acquire a legal settlement in any parish, township, or place, any law or statute to the contrary notwithstanding : and that no such person shall by reason thereof be exempt from the ballot for or from serving in the militia.

13. That the justices of the peace acting for the division or limits within which any such special constables shall have been called out to serve, at a special session to be held for that purpose, or the major part of the justices at such special session, are hereby empowered to order, from time to time, such reasonable allowances for their trouble, loss of time, and expenses, to be paid to such special constables, who shall have so served or be then serving, as to the said justices, or such major part of them, shall seem proper ; and the said justices, or such major part of them, may also order the payment of such expenses as may have been incurred in providing staves or other necessary articles for such special constables ; and the said justices so ordering, if justices for any county, riding, or division having a separate commission of the peace, or if justices for any liberty, franchise, city, or town which shall be contributory to the public rate for any county, riding, or division, shall make every order for the pay-



ment of such allowances and expenses upon the treasurer of such county, riding, or division, who is hereby required to pay the same out of any public money which shall then be in his hands, and the said treasurer shall be allowed all such payments in his accounts; and where the justices of the peace, assembled at such special sessions or justices for any liberty, franchise, city, or town which is not contributory to the public rate for any county, riding, or division, but which raises a rate or other similar fund in the nature of a county rate, in every such case the said last-mentioned justices shall make every order for the payment of such allowances and expenses as aforesaid upon the treasurer or other officer having the collection or disbursement of such last-mentioned rate or fund, who shall forthwith pay every such order out of such rate or fund, and shall be allowed all such payments in his accounts.

The 1 & 2 Will. 4, c. 41, is not repealed with respect to the appointment and remuneration of special constables within boroughs. By the 5 & 6 Will. 4, c. 76, s. 83, the borough of Manchester, which was incorporated subsequently to 5 & 6 Will. 4, c. 76, and has a separate court of quarter sessions, is contributory to the county rate within the meaning of 1 & 2 Will. 4, c. 41, s. 13; and, therefore, an order by justices of borough of Manchester upon treasurer of county of Lancaster for payment of the expenses, &c. of special constables appointed under 1 & 2 Will. 4, c. 41, for the borough of Manchester, is good. (a)

19. And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such cause of action shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court, after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client; and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be, shall certify his approbation of the action and of the verdict obtained thereupon.

The payment of penalties, and the mode of levying the same, are

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(a) *R. v. Hulton*, 13 J. P. 328.



pointed out by section 16 of this statute, and may be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress; and for want of sufficient distress, such offender shall be committed to the common gaol or house of correction *with or without* hard labour for any time not exceeding one calendar month where such sum shall not exceed 5*l.*, and not exceeding two calendar months in any other case.

By 5 & 6 W. 4, c. 42, all persons willing to act as special constables under 1 & 2 W. 4, shall be capable of being appointed and acting, and may be appointed and act as such special constables, notwithstanding they may not be resident in such parish, township, or place as aforesaid, or in the neighbourhood thereof; and shall have all the powers and be entitled to all the privileges and benefits, and be subject to all the duties and liabilities of special constables appointed under the provisions of the former Act.

### *7. Powers and Duties of Constables.*

*Instructions for petty constables,*  
70.

*Rules as to county constables,*  
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*Rules as to local constables,* 78.

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*Right of a constable to detain chattels which a magistrate has ordered him to impound for production in evidence at the trial,* 94.

*Right of a prisoner before trial to property found on him, and not connected with the charge,* 95.

*Instructions for petty constables.]* The following instructions have been promulgated for the guidance of constables, whether appointed under the County Constabulary Act, or under the Act 5 & 6 Vict. c. 109, for the appointing of parish constables:—

“The constable may arrest one whom he has just cause to suspect to be about to commit a felony. Thus when a drunken person, or a man in a violent passion, threatens the life of another, the constable should interfere and arrest.

“He should arrest any person having in his possession any picklock-key, crow-jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or out-building, or any person armed with any gun, pistol, hanger, cutlass, bludgeon, or offensive weapon, or having upon him any instrument, with intent to commit any felonious act.

“Every person found in any dwelling-house, warehouse, coach-house, out-house, or stable, or in any enclosed yard, garden, area, and being there for any unlawful purpose, may be arrested.

“In each of these cases the constable must judge from the situation and behaviour of the party what his intention is. In some cases no doubt can exist; as when the party is a notorious thief, or acting with those who are thieves, or when the party is seen to try people’s pockets in a crowd, or to attempt to break into a house, or



to endeavour to take any property secretly from another. The constable will not act hastily, in case the intention is not clear, but content himself with watching closely the suspected party, that he may discover his design.

“The constable must arrest any one whom he sees in the act of committing a felony, or any one whom another positively charges with having committed a felony, or whom another suspects of having committed a felony, if the suspicion appear to the constable to be well founded, and provided the person so suspecting go with the constable.

“Though no charge be made, yet if the constable suspect a person to have committed a felony, he should arrest him; and if he have reasonable grounds for his suspicions, he will be justified, even though it should afterwards appear that no felony was in fact committed; but the constable must be cautious in thus acting upon his own suspicions.

“Generally, if the arrest was made discreetly and fairly in pursuit of an offender, and not from any private malice or ill-will, the constable need not doubt that the law will protect him.

“If, after sunset and before sunrising, the constable shall see any one carrying a bundle or goods which he suspects were stolen, he should stop and examine the person, and detain him; but here also he should judge from circumstances (such as appearance and manner of the party, his account of himself, and the like) whether he has really got stolen goods, before he actually takes him into custody.

“The constable must make every exertion to effect the arrest; and the law gives him abundant power for the purpose. If the felon, or party accused of felony fly, he may be immediately followed wherever he goes; and if he takes refuge in a house, the constable may break open the door, if necessary, to get in, first stating who he is and his business; but the breaking open outer doors is so dangerous a proceeding, that the constable should never resort to it except in extreme cases, and when an immediate arrest is necessary.

“There are some cases in which a constable may and ought to break into a house, although no felony has been committed, when the necessity of the case will admit of no delay, as when persons are fighting furiously in a house, or when a house has been entered by others with a felonious intent, and a felony will probably be committed unless the constable interfere, and there be no other means of entering; except in such cases, it is better in general that the constable should wait till he has a warrant from a magistrate for the purpose.

“If a prisoner should escape, he may be retaken, and in immediate pursuit the constable may follow him into any place or any house.

“If a constable find his exertions insufficient to effect the arrest, he ought to require all persons present to assist him, and they are bound to do so.

“In cases of actual breaches of the peace, as riots, affrays, assaults, and the like, committed within the view of the constable, he should immediately interfere (first giving public notice of his office, if he be not already known), separate the combatants, and prevent others



from joining in the affray. If the riot, &c., be of a serious nature, or if the offenders do not immediately desist, he should take them into custody, securing also the principal instigators of the tumult, and doing everything in his power to restore quiet.

“A constable in cases of assault which have not been committed in his presence, or within his view, is not authorized to arrest or assist in arresting the party charged, nor is he to receive a person so charged into his custody, unless the party has been arrested by some other constable who saw the assault committed.

“He may arrest any one assaulting or opposing him in the execution of his duty,

“If a person forcibly enter the house of another, the constable may, at the request of the owner, turn him out directly; if he have entered peaceably, but having no right to enter, and the owner request the constable to turn him out, the constable should first request him to go out, and unless he do so, he should turn him out, in either case using no more force than is necessary for the purpose.

“When the offence has not yet been committed, but when a breach of the peace is likely to take place, as when persons are openly preparing to fight, the constable should take the parties concerned into custody; if they fly into a house, or are making preparations to fight within the house, the constable should enter the house to prevent them, and likewise take the parties into custody; and should the doors be closed, he may break them open, if admission be refused, after giving notice of his office, and his object in entering.

“If a party threaten another with immediate personal violence, or offer to strike, the constable should interfere and prevent a breach of the peace; if one draw a weapon upon another attempting to strike, the constable should take him into custody. If persons be merely quarrelling or insulting each other by words, the constable has no right to take them into custody, but should be ready to prevent a breach of the peace.

“The constable ought to arrest and take before a justice any person walking about the streets, and exposing to view in the streets any obscene print or exhibition.

“If a party charged with a misdemeanor escape out of custody, he may be pursued immediately anywhere; and if he take refuge in a house, the doors may be broken open after demand of admission, and after notification by the constable of his office and object in coming.

“After arrest the constable is in all cases to treat a prisoner properly, and impose only such constraint upon him as may be necessary for his safe custody.

“The constable is bound to follow the directions contained in a warrant, and to execute it with secrecy and dispatch; the power given to him for the purpose of arresting has been already shown. If the warrant cannot be executed immediately, it should be executed as soon as possible afterwards.

“The constable must execute the warrant himself, or, when he calls in assistance, must be actually present. Upon all occasions he ought to state his authority, if it be not generally known, and should show his warrant when required to do so; but he should never part



with the possession of the warrant, as it may be wanted afterwards for his own justification.

“Upon the arrest being made, the prisoner is to be taken before the magistrate as soon as convenient. When the prisoner is brought to the justice, he still remains in custody of the constable until his discharge or committal, or until the officer receives the orders of the justice.

“The constable may enter a house to search for stolen goods, having first got a search warrant from a magistrate for that purpose. He should, when it is possible so to do, execute it in the day time. If he find the goods mentioned, he is to take them to a magistrate, and, when the warrant so directs, he must take the person also in whose possession they are found. To avoid mistakes, the person who applies for the warrant ought to attend at the search to identify the goods.

“The constable has power to apprehend and carry before a justice of the peace every common prostitute wandering in the public streets, public highways, or in any place of public resort, behaving in a riotous or indecent manner; every person wandering abroad, or placing himself or herself in any public street or highway, court or passage, to beg or gather alms, or causing or procuring or encouraging any child so to do, all such being declared by the law to be idle and disorderly persons; every person wandering abroad, or lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself; every person wandering abroad and endeavouring, by the exposure of wounds or deformities, to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; every person playing or betting in any street, road, highway, or other open or public place, or at or with any table or instrument of gaming at any game or pretended game of chance.”

*Rules as to county constables.]* Rules made by the Right Hon. Sir George Grey, Bart., one of Her Majesty's principal secretaries of state, pursuant to the 3rd section of the 2 & 3 Vict. c. 93, for establishing an uniform system for the Government, Pay, Clothing, Accoutrements, and Necessaries for Constables appointed under that Act.—Whitehall, 2nd February, 1857.

#### QUALIFICATIONS.

*Chief Constable.*—He must be certified by a medical practitioner to be in good health, and of sound constitution, and fitted to perform the duties of his office.

He must be recommended to the secretary of state by the magistrates in whom the appointment is vested, as a person of general good character and conduct.

*Superintendent or inspector.*—His age must not exceed 40 years.

He must not be less than five feet seven inches high, without his shoes.



He must be a man of general intelligence, able to read and write well, and to keep accounts :

And must be certified by a medical practitioner to be free from bodily complaint, and of a strong constitution.

*Serjeant or constable.*—His age must not exceed 40 years.

He must not be less than five feet seven inches high, without his shoes.

He must be able to read and write, intelligent and active, and certified to be free from bodily complaint, and of a strong constitution; and recommended as of irreproachable character and connexions.

On the special recommendation of the chief constable, with the approval of two justices, as to the peculiar fitness for appointment as superintendent, inspector, serjeant, or constable, of a person exceeding the limited age, or under the standard height, the secretary of state will consider whether the case may not be made an exception to the rules.

If a candidate for any of the above offices has been previously employed in any branch of the public service, civil or military, he shall not be eligible for appointment unless he produces satisfactory testimonials of his conduct in such service; and a person who has been *dismissed* from any police force shall not be eligible for appointment in any other police force.

No person shall be appointed or retained in any of the preceding offices who shall hold any other office or employment for hire or gain (a), or who shall sell or have any interest in the sale of any beer, wine, or spirituous liquors.

When vacancies occur in the office of superintendent, inspector, or serjeant, it is desirable that encouragement should be given to meritorious men serving in the subordinate stations, by their promotion to the higher stations when they are qualified.

#### PAY.

The following rates of pay are intended to be exclusive of any expenses for the purchase of a horse or forage, for which, when a horse is necessary, a separate allowance should be made.

The chief constable's pay, whether he is appointed for one county alone, or for two or more adjoining counties, or parts of counties, is not to be less than 250*l.* or more than 500*l.* a year,—the apportionment of his pay, when he is appointed for more than one county, being arranged by mutual agreement between the justices of the counties for which he acts.

The superintendent's pay not less than 75*l.* or more than 150*l.* a year.

The inspector's pay not less than 65*l.* or more than 120*l.* a year.

The weekly pay of the serjeant is to be not less than 19*s.* or more than 25*s.*

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(a) 2 & 3 Vict. c. 93, s. 10.



The weekly pay of the constable is to be not less than 15s. or more than 21s.

Constables are not to receive any *fees*, which, by the 17th section of the 3 & 4 Vict. c. 88, are to be paid to the treasurer of the county; but the above rates of pay are intended to be exclusive of any allowance under the 18th section of the 2 & 3 Vict. c. 99.

#### CLOTHING.

The serjeant and constable are to be supplied with the following articles in addition to their pay, viz:—

In the first year—One great coat with cape and badge.

One coat with badge.

Two pairs of trowsers.

One pair of boots.

One pair of shoes.

One hat.

One stock.

In the second year—One coat with badge.

One pair of trowsers.

One pair of boots.

One pair of shoes.

One hat.

The supply for the third year will be the same as for the first, and for the fourth the same as the second; and so on for successive periods.

#### ACCOUTREMENTS AND NECESSARIES.

A constable's staff and a pair of handcuffs are to be supplied to each constable. A small cutlass may be supplied to any constable whose beat is so situated that, in the opinion of two justices of the county, it is necessary for his personal protection in the performance of his duty. The cutlass is to be worn at night only, or at times when rioting or serious public disturbance has actually taken place or is apprehended; or upon any sudden emergency when orders have been given by the chief constable that one or more of the constables should be so armed; and the chief constable shall, on each occasion of giving any such order, report the same, and the reasons for such order, to any two justices of the peace for the county as soon afterwards as is practicable.

#### GENERAL INSTRUCTIONS.

The chief constable will make a report in writing to the justices assembled at every quarter sessions of the peace for the county, of the amount and effective state and operation of the force, and shall append thereto a statement of the distribution of the force, of the number of persons apprehended by the police, the nature of the charges against them, and the result of the proceedings; the number of offences reported to the police, and any other particulars which may tend to show the state of crime in the country. Immediately



after the termination of the sessions the chief constable shall transmit a copy of this report to the secretary of state for the home department, with a copy of any note or minute made thereon by the justices. But the chief constable need not transmit with such report the statement appended thereto, unless directed to do so by the justices.

The chief constable will, subject to the approval of the justices, frame all such orders and regulations as he shall deem expedient for the government of the force, and shall submit to the justices at every quarter sessions, copies of all regulations and general orders made by him since the preceding sessions.

The chief constable will cause a charge sheet, according to the annexed Form A., to be kept by the constables under his orders; and will take care that the constables enter thereon the name, offence, and other particulars relating to every person apprehended by them, and lay the same before the magistrates by whom the charges are to be heard. And when all the cases entered therein have been disposed of by the magistrates, the chief constable will cause the charge sheets to be sent to him, or to be kept safely by one of his subordinate officers.

The chief constable will also cause the constables to enter in a charge sheet, made according to the annexed Form B., the particulars relating to every person against whom a charge is made, which is not taken by the constable; and at the expiration of every three months the chief constable will transmit the charge sheets A. and B. to the clerk of the peace of the county, who will dispose of them as may be directed by the justices at sessions.

The chief constable will also make an immediate report to two justices of the peace of any serious disturbance of the public peace that has taken place or is apprehended, and of any crimes of an aggravated nature committed, and for which the parties charged or suspected have not been apprehended; and in order that further arrangements, if required, may be made without delay, he will immediately transmit duplicates of such information to the secretary of state for the home department, so as to insure the earliest communication to the proper authorities of any matter affecting the public peace.



FORM A.

County of  
REPORT OF CHARGES from the

day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_

| No. of Charge. | When apprehended. | Persons Charged;<br>Age, Name, Address,<br>and<br>Occupation. | Charge. | Persons Charging;<br>Name, Address,<br>and<br>Occupation. | Witnesses;<br>Name<br>and<br>Address. | Taken<br>into Custody by | Property found on<br>Person or elsewhere | Detained. | Or Hour admitted<br>to Bail. | Signature<br>of<br>Constable<br>taking<br>the<br>Charge. | No. of Charge. | Magistrate<br>before whom<br>the<br>Charge<br>is brought. | Charge;<br>How disposed of<br>by Magistrate,<br>and<br>what Offence<br>proved. | Remarks<br>by<br>Magistrate. |
|----------------|-------------------|---------------------------------------------------------------|---------|-----------------------------------------------------------|---------------------------------------|--------------------------|------------------------------------------|-----------|------------------------------|----------------------------------------------------------|----------------|-----------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------|
|                |                   |                                                               |         |                                                           |                                       |                          |                                          |           |                              |                                                          |                |                                                           |                                                                                |                              |

FORM B.

County of  
REPORT OF CASES at

, in which the charge was not taken.

| Hour<br>when brought in. | Name and Address<br>of Complainant. | Nature of Charge or Complaint. | Name and Address of<br>Person accused. | Name of the Constable, and the<br>Reason of the Charge not<br>being taken. | --- |
|--------------------------|-------------------------------------|--------------------------------|----------------------------------------|----------------------------------------------------------------------------|-----|
|                          |                                     |                                |                                        |                                                                            |     |



*Rules as to local constables.]* Regulations made by the Marquess of Normanby, one of Her Majesty's principal secretaries of state, pursuant to the 16th section of the 3 & 4 Vict. c. 88, for the Government of the Local Constables appointed under that Act.—Whitehall, 1st December, 1840.

#### APPOINTMENT OF CONSTABLES.

No person shall be appointed a local constable who shall be a gamekeeper, wood-ranger, bailiff, sheriff's bailiff, or who shall be a hired servant in the employment of any person, or who shall keep or have any interest in any house for the sale of beer, wine, or spirituous liquors; and if any person who shall be appointed a constable, shall at any time after such appointment become a gamekeeper, wood-ranger, bailiff, sheriff's bailiff, or shall act in any of the said capacities, or shall sell or have any interest in the sale of any beer, wine, or spirituous liquors, such person shall thereupon become and be incapable of acting as such constable, and shall forfeit his appointment of constable, and also all fees or allowances payable to him as a constable; and the chief constable shall not insert in the list to be made out by him and laid before the justices acting in and for any petty sessional division of the county at one of their special sessions, holden for hearing appeals against the poor rates, the names of any persons so disqualified.

#### PAY, OR FEES AND ALLOWANCES.

The local constable is to receive, for the service of summonses and execution of warrants, and for the performance of such other occasional duties as may be required of him, such fees and allowances only, and under such regulations, as shall from time to time be settled by the justices of the county in general or quarter sessions, and approved of by one of Her Majesty's principal secretaries of state.

He shall not upon any occasion, or under any pretence whatsoever, take money or other gratuity from any person for any act done by him by virtue of his office of constable, without the permission in writing of the chief constable, or of the justices in general, or quarter, or petty sessions assembled.

#### GENERAL INSTRUCTIONS.

All summonses are to be served, and warrants executed, as soon as practicable. If the party against whom a summons or warrant has been delivered to any constable cannot be found within the parish, township, or place for which such constable is appointed, or if for any other cause the constable is unable to serve the summons or execute the warrant, he will report to the chief constable that such summons or warrant is in his possession, with the cause why the same has not been served or executed, and he will give to the chief constable, or to such other constable as the chief constable may name, all the information he can that may lead to the discovery of the party, that the necessary steps may be taken accordingly.



Parties in custody are to be taken before a magistrate as soon as possible, and the nature of the offence, with other particulars entered in a charge sheet, (Form A.) The charge sheet is to be laid before the magistrate by whom the charge is to be heard; and when all the cases entered therein have been disposed of by the magistrate, the charge sheet is to be sent to the chief constable, or kept safely by one of his subordinate officers, as he shall direct.

If a charge against a party be not taken by the constable, an entry is to be made by him in form B, and the particulars filled up under each head, and transmitted to the chief constable.

And all such charge sheets are to be returned by the chief constable, once in every three months, to the clerk of the peace for the county, who is to keep them in his custody until he shall have received the directions of the justices of the peace for the county, assembled at any quarter sessions, as to the final disposal thereof.

#### COMPLAINTS IN CASE OF MISCONDUCT.

In cases of complaint against constables, the party complaining should address himself in the first instance to the chief constable, who will, in his discretion, proceed to inquire into the same summarily, or give immediate notice to a justice of the peace, who will proceed thereon according to law, if the offence be cognizable by him; and if the subject of complaint do not constitute any offence legally cognizable by him, the said justice will lay a statement thereof before the justices of the county at the next quarter sessions of the peace, or any adjournment thereof, and the justices will inquire into the same.

*As to county and borough constables.*] By stat. 19 & 20 Vict. c. 69, s. 7, the constables acting under the said Acts of the second and third and third and fourth years of Her Majesty, the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require.

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*Acting under a search warrant, and other duties.*] Care should be taken, if possible, to search the premises of a suspected person, when he is at home, for should he learn the fact, and he be guilty of the offence alleged, he no doubt would escape, and then would come the expense of apprehending him. The impropriety sometimes does not end here: perhaps after a very serious expense in the pursuit, the answers of the man, when apprehended, end the charge against him. For instance, suppose you have found a quantity of property in the house of a person answering the description of the property lost; if he be in the house during the time of the search, on being charged with the robbery, and the goods found, perhaps, bearing no particular mark upon them, and only known from the same pattern, or from their general appearance, which fact does not strike the delinquent at the time, he very probably at once states the truth of the matter in question, or otherwise asserts a downright falsehood,



which the officers can easily prove by other witnesses ; but allow him once to escape and be at large for a time, he may consult some one who would not shrink at giving unlawful advice to a guilty party, and receiving a reward for their advice from the delinquent, so as to evade and defeat the ends of justice, and share the plunder. Should circumstances so happen that the house of an offending party cannot conveniently be searched in his presence, it would be advisable to fasten the doors, and allow no person to go out or come in during the search, and also previous to commencing the search to have a constable or some trustworthy person to watch the suspected party, until you have finished the search, "to prevent *any kind* neighbour from giving him the information ;" also, should he by any means abscond, to pursue him. Should an offender escape, lose no time in the pursuit of him, also in forwarding the necessary and as minute a description as possible can be had of the offence committed, and of his person, &c. ; and the opinion of the writer is, that the information should be sent to the police and constables alone, or at all events to a trusty person, and not by having bills posted up on every street corner. How often does it happen, the very persons themselves read on the wall their own description of person, &c., and consequently remove from that part of the country ; and should the description of the dress correspond, of course they will alter that also. Police gazettes, too, are purchased by the thieves, in order to ascertain the description given of themselves, and if any way corresponding, a change is made as soon as possible. The writer begs to say, in his humble opinion, the system is bad in allowing copies to be sold, except to official officers. Should an offender make his escape effectually, and the advertisement brings no tidings of him, wait quietly and watch the post-office. All honest postmasters will assist to detect a thief. Should you suppose you have got a scent by the post-mark of the letter, and you proceed to the place bearing the post-mark, and do not find your lost friend, do not despair ; it is an old practice with thieves to carry or send the letter to a neighbouring post-office for fear of such detection, also to instruct their friends to be sure and not post the answer at their own post-office, but carry it to a distance ; therefore, the best step to take in such a case would be, to watch the place where you suspect the offender to have posted his letter ; should you visit the neighbouring villages or towns near to where you suspect he is secreted, you must be so disguised as to leave no possible chance of your identity being recognized. Should the character be of a low cast, and the crime of a serious nature, resort to what the writer once put in practice, and with success, after several night's perseverance, viz. : to assume the garb and address of a tramper or vagrant, and condescend to sleep and act as one ; use proper caution, and you will soon find your treasure, besides amassing more information than can be gained by any other means. Should you search the house of a suspected party, and not find the property, intimate on leaving the house that they are innocent of the charge ; search the same house again in a week, and ten to one but you succeed.

It often happens a criminal escapes for want of funds to support the officer in the pursuit after him. Depend upon it, unless the



officer have some probable means of being reimbursed for his trouble and unseen expenses in pursuing an offender, he very soon loses all the magic power from his staff.

Sending out an officer to pursue a thief without funds or without some probable chance of being reimbursed for his outlay, very much resembles sending a ship to sea without a rudder. There are instances where an officer has at his own cost pursued offenders. I, myself, during my practice, have done so, and transported one notorious cracksman for ten years, which cost me twenty-three pounds, and another for seven years, which cost me seven pounds. One was for common larceny, and therefore I was aware I could not recover anything for pursuing him, which amounted to seven pounds. With regard to the other, it may be as well to name the circumstances here. By the statute 7 G. 4, c. 64, s. 28, costs are allowed for the apprehension of persons charged with certain offences; amongst the number robbery from the person is included. My prisoner was charged and convicted for stealing from the person to the amount of seventy-one pounds, and was transported for ten years; but my readers must here draw the distinction between "robbery" from the person, which means taking the money by force, &c., and "stealing" from the person, which is mere larceny, and means taking the money by stealth—picking pockets to wit, and therefore not within the statute. The prosecutor in my case was William Wigham, of Evenwood, in the county of Durham, who, after paying all costs, save mine, received back thirty-five pounds of the stolen money; but neither by persuasion nor instinct of good feeling, could he ever be brought to think he owed me anything.

It would also appear that a man dead drunk cannot be robbed, because the offence of robbery consists of taking against his will, and therefore an offender under such circumstances should be dealt with as for larceny (*a*).

Under the 5 & 6 Vict. c. 109, the officer certainly has a better chance of being reimbursed for his services, so far as regards the North Riding of Yorkshire; but I should also recommend even under that statute, to form associations for the prosecution of evil-doers and the protection of property. Some people have also a sort of false delicacy in coming forward to prosecute; but form an association and the delicacy at once disappears, the association prosecuting the guilty offender.

There is also another and very material advantage derived from those associations; they form one united strong body of men, who have joined together for one common purpose, and who are ready and willing to give you any information they may happen to be in possession of, and if they be voluntary subscribers to the association, the information is such as you can depend upon.

I would remark here, that should the expenses be likely to amount to any important sum, it would be better to have a magistrate's order to proceed, or he could not allow the costs according to the table of allowance. Suppose you go to search a person's house; depend upon it, if you be civil, nineteen times out of twenty they will give you

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(*a*) See 9 J. P. 745.



permission; and if the party persist that you shall not search it, leave some assistants in charge until you obtain a warrant, as it certainly would indicate a strong sign of guilt by the refusal to search. Always avoid doing damage to any of the party's property as far as possible, and also at all times use as much forbearance either with respect to blows or language as you really can command. All that can be written or said on the duties of a constable still leaves a wide space for the officer to act and be guided by his own discretion, according to the merits of the case. It is absurd to think that a person who is thrust into office for a year, and very probably even that against his will, can know anything concerning, or feel any interest in police matters; he is actuated by personal apprehension, and dreads making himself obnoxious. His private occupation as a farmer or little tradesman engrosses his time, and in most cases renders him loath to exertion as a public officer; then, again, on the contrary, there is what we term the volunteer constable, who generally is of that class called the indolent and lazy, who prefer earning a shilling or two by serving a summons, rather than by attending to their work; and what is worse, would have no objection to allow a felon to escape, only pay them well. There are exceptions certainly, and I have no doubt but the former class of constables would work well with a good superintending constable over them.

By the late statute 5 & 6 Vict. c. 109, lock-up houses can be provided in certain parishes or places, and are a great convenience to the constables and officers of the district, and in some instances act as a check upon the evildoers.

It would no doubt be better if the constable be a person of little or no experience, to act under a magistrate's warrant. Cases sometimes occur in which constables as well as private persons are involved in civil liabilities from a want of caution in arresting a party suspected of felony. Where a charge of felony is made by a party, and a constable is applied to for the purpose of arresting the accused, it behoves the officer to consider whether or not he has jurisdiction as regards the locality, since if a constable make an arrest, though upon a reasonable charge of felony, out of his constablewick, he places himself in the position of a private individual, and his official character will afford him no protection. Upon this point a very recent case is to be found in 1 *Car. & Mar.* 513 (*Rawcliffe v. Murray, Larkin, and Petty*), which was an action for assault and false imprisonment. The circumstances of the case will justify the careful attention of all officers of the peace. It appeared that the two defendants, Murray and Larkin, were police constables of Oxfordshire, and the defendant Petty suspecting that the plaintiff had stolen his horse, went with the two other defendants to Bristol, where, finding the plaintiff, the officers, at the instance of Petty, took him into their custody, and proceeded with him to Oxford, not having obtained from any Bristol magistrate any warrant for the purpose. When taken before the Oxford magistrate, the plaintiff was committed for trial, and was ultimately acquitted. Upon this the plaintiff brought his action, and the two constables pleaded "not guilty," and Petty pleaded a justification, which, however, he was unable to prove. Upon the trial it was contended, on the behalf of the constables, that though they were not



constables of Bristol, nor had any warrant from a Bristol magistrate, and though they committed the trespasses in Bristol, and therefore out of their jurisdiction, they were nevertheless acting as constables in seizing a man whom they suspected of felony, and that they were within the provisions of 24 G. 2, c. 44, s. 8, and the 21 Jac. 1, c. 12, s. 5, and might give the special matter in evidence as a defence to the action. Mr. Justice Wightman, however, thought otherwise, but conceived that the special matter might be given in evidence in mitigation of damages, as the declaration averred that the trespasses were committed without any reasonable or probable cause; and in summing up, his lordship said that the only question was, whether the defendants caused the imprisonment of the plaintiff, and if so, what were the damages? The jury returned a verdict for the plaintiff.

Had the two officers in the above case taken the precaution to arm themselves with a magistrate's warrant when at Bristol, they would have been completely justified, let the result to the other party have been as it may. In some cases, by the express provision of the legislature, constables appointed for one district may legally act in another: thus, by the Municipal Corporation Act, 5 & 6 W. 4, c. 76, s. 76, it is provided that the constables to be appointed by the watch committee of the town council, shall, not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county, being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable duly appointed has within his constablewick, by virtue of the common or statute law of the realm (a). Also by the late Parish Constables' Act, 5 & 6 Vict. c. 109, s. 15, recites, that the said constables shall have within the whole county, and also within all liberties and franchises and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities of a constable within his constablewick, but shall not be *bound* to act as a constable beyond the parish for which they are severally appointed and sworn, without the special warrant of a justice of the peace. Provided always, that in those counties in which any chief constable or superintendent shall have been appointed, the constable appointed for any parish within the district for which such chief constable or superintendent shall have been appointed, shall be subject to the authority of such chief constable or superintendent.

Another and very important advantage is derived from a regularly trained superintendent. The magistrates are, and very properly ought to be, relieved from the trouble of directing the constables in the performance of their duty, where, in many instances, the magistrates have to make themselves not only magistrates, but superintendents of police.

Gentlemen are appointed to the office of magistrate from their

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(a) See J. P. No. 18, vol. vii. p. 237.



high respectability to perform magisterial acts ; but they are of too high a sphere in life to be acquainted with the necessary technicalities connected with thief-taking.

Also, a magistrate looks to the superintendent to be a person of some practice ; and if he be a zealous and able officer, who does his duty in all cases, he will be allowed by the magistrate to conduct the case, and call the different witnesses in proper order. Besides, the magistrates are well aware the officer is in full possession of the facts of the case, of which they themselves could know but little, except what they learn from the officer, and, consequently, would otherwise act in ignorance of the case. It has been very justly observed by Coke, that a constable should be possessed of honesty, knowledge, and ability ; and if a man be chosen constable, and it turn out he is not able and qualified, he may be discharged from his office by law. It is highly necessary that the superintendent, or the chief officer of the establishment, should be well versed in the law applicable to the case, and also be a man well experienced in police matters. I once knew four officers search a brothel for stolen sovereigns, but without effect ; and the whole of them were left in the house, concealed, by being pressed into a piece of common yellow soap, left in its usual place. It is very common for those unfortunates to secrete rings, diamonds, &c., in a piece of soap laid carelessly on the wash-stand or some such place. Should a robbery be committed and the person injured send for you immediately, and after a minute investigation of the case you can obtain no clue to the offender, and the property or any part of it be of such a nature as are not perishable goods, keep the case as secret as possible for a short time—the goods may be, and very often are, secreted or planted ; or should the thief have fenced or sold the goods, an old fencer often keeps the stolen property secreted for some time, and particularly when a great outcry has been made after the property ; so that by keeping the case as secret as possible, the thief, should he have stolen the property for his own individual use, will sell it sooner, and if the purchaser be a fence or buyer of stolen property he will use less care and caution by hearing no outcry ; but never allow the time to exceed three months between the robbery and the final search, or perhaps you will have some difficulty in proving recent possession of the stolen goods : on the other hand, should the stolen goods be of a perishable nature, or anything likely to be reduced or defaced by the crucible, lose not a moment, despatch must then be the order of the day. An officer should have a knowledge of legal evidence, and especially of circumstantial evidence, and should guard against rash, arbitrary, or vexatious interferences. It sometimes happens a person is apprehended on suspicion by a warrant, and no doubt there may have been good ground for suspicion, but the warrant is placed in the hands of an experienced officer, who, when he finds the party, at once ascertains his entire innocence of the charge, and perceives him to be the most important witness in the case, and, consequently, never allows the party to know he had a warrant against him ; now, had that warrant been placed in the hands of an inexperienced officer, the party charged being apprehended, he, in all probability, well knowing his own innocence, would not tell you half of what he knew about the case,—perhaps just sufficient to



establish his own innocence, but at the same time being in full possession of the whole proceedings. The impropriety does not end here. When the witness is placed in the box to give his evidence, the counsel for the defence will ask him, "Were you not apprehended on this charge?"—"Yes, I was." "And so you trump up this story to clear yourself, and throw it upon the innocent man at the bar."

It is my firm opinion that if poaching and vagrancy be put down, and more especially in the rural districts, crime will be of very rare occurrence. I would recommend for the suppression of vagrants, to commit every one where the case was proved against them; this is not the opinion of myself alone, but of the most experienced officers in the kingdom. In fact, as is before stated, I know it from personal observation, during my several nights' lodging in those padding kens (trampers' lodging-houses), that it is quite common for one trumper to tell another the exploits of the day, and more particularly if he have had a narrow escape from being sent to the steel (treadmill), and only escaped by gammoning the magistrate or officer, and at the same time informing his brother in crime of the most charitable houses in the district, and that he has the same chance of deceiving the officer or magistrate, as he himself had done, and was therefore a coward not to try it once; he then goes on describing the different houses to be called at, describes the officer, whether he be one of the fly coves or a flat, how he is dressed, and where he is likely to be seen. Perhaps the sympathy of the inexperienced may criticise the appellation of *brother in crime* being applicable to a vagrant. I do assure such innocent sympathizing minds, that the greatest part of the crimes and depredations are committed either directly or indirectly by those trampers, either committing it themselves or making the necessary observations, and communicating the same to a common thief, whom he has arranged to meet at the house of rendezvous at night, and who is perhaps a better adept at the art than himself. Many, nay almost the whole of them are direct thieves; upon numbers of them, on being searched, I have found stolen property, which has been identified, the delinquents have been tried, convicted, and some transported. During my second night's abode in one of those "kens," or lodging-houses, I was asked the question as to the line of profession I professed. My answer was, "A whitesmith, out of employ." One stout fellow observed I should be a fool if I ever found employ: as for himself, holding out his huge hand, he said, "There is a hand that has not struck a bat at work these fourteen years, and I hope will not for fourteen years more." I inquired how he managed his work so well as not to be sometimes sent to the "steel" (tread-mill). He said he had never been in gaol but once, and that was for "slumming" (passing bad money), but was acquitted. They tell the people in the rural districts they are poor tradesmen out of employ, and generally assume the trade that is most depressed at the time. They state they are in search of work, but pray to God they may never find it. They live well generally, and beg for more food than they can eat, for which they find a ready sale to the keepers of those lodging-houses who are generally in possession of two or more fat pigs; and if they have not, there are others ready enough to buy the fragments collected by those wandering mendicants for the same



purpose. They laugh at the charitable, and call them "flats." They spend their money in drinking, clothes being of little use. Most of them are accompanied by a female; they sometimes divide during the day, but meet at the appointed lodging-houses at night. The female sometimes assumes sickness, at others pretends to be near her confinement, sits down and assumes her usual affectation; the unwary takes the alarm, and perhaps tips her with half-a-crown, and a little warm gin-and-water, the very cordial she wishes to have; she now feels herself much better and appears anxious to get on her journey, having some kind friend living at a distance who will gladly give her shelter during her accouchement. Perhaps she plays off this trick successfully three or four times a day, and, should opportunity offer, will steal as many silver spoons, rather than run the risk of tumbling over them. She then makes her way to the appointed lodging-house to meet her paramour, who spends their ill-gotten gains in revelry, and disposes of her dress to some other vile deceiver, and next day assumes (providing she partake of that scanty and lean appearance which generally bespeaks illness) that of a poor woman subject to fits, but always contrives to fall down near a good-looking house, which very probably has been pointed out or described to her the night before at the lodging-house. She is now attacked by one of those self-commanded fits, falls *very gently down*, and of course, in a village, is very soon surrounded by the unwary and kind-hearted Christians, who find her apparently in the last agonies of death, foaming at the mouth *by having a piece of soap therein*, her lungs refusing to perform their usual and natural duties by the reason of her holding her breath. Perchance she is carried into some good neighbour's house, who administers to her wants by applying stimulants, &c.; some one prescribes a "little tea, hot," she then gives a groan, and affects a return of the dreadful malady. By-and-by a little wine or spirit and water is named; she then, alas! is rather recovering, and moves her hand for the fulfilment of the last and only restorative, which generally has the effect of producing a rapid recovery, and particularly if a small subscription hath been set on foot for her through the company assembled. Sometimes a medical gentleman is unfortunately called in, who if he talk about bleeding her, she turns sick by swallowing the soap, and consequently vomits, which restores her without letting of blood, and as soon as she can catch hold of the money collected she moves off. Others assume the garb of gipsies and go fortune-telling, at the same time begging food, clothes, money, or anything, besides stealing nothing out of their reach, but everything portable within it; for all of which a ready market is found at the lodging-houses, and there all getting drunk with the proceeds. It is a bad day when they cannot make three or four shillings a day by tramping, begging, stealing, and other impositions usually practised by them on the unsuspecting public, and sometimes as many pounds. The writer of a very elaborate article in a recent number of the *Edinburgh Review*, on the statistics of mendicity, states that the money annually given to mendicants cannot be less than 1,375,000*l.*, being one-third the total amount of poor rates; that on an average each begging family obtains 55*l.* per annum; that about one in every hundred lives in a state of practical vagrancy; that there are 25,000



English begging families, on an average consisting of six persons in each family. Through the year a vagrant assumes different professions, sometimes a shallow-cove, or shallow-fellow, going about the county half-naked, but having good clothes, perhaps sent forward to the lodging-house by his jomer (girl); this is very often a profitable trade; the shallow-cove of course selling all the clothes he does not need himself. Sometimes, after accumulating a pretty good wardrobe, he will assume the highfly (a beggar with letters pretending to be a broken-down gentleman, tradesman, or sea-captain), finds out the names of the different gentlemen at the lodging-houses; and should he be at all well versed in sea phrases, finds out the residence of the retired captains, &c.; and should the captain or other gentleman be at home of course he does not know him, but knows some neighbouring gentleman, whom he (the highflyer) has already ascertained is some distance from home, and at once asserts he has sailed with the absent gentleman, in such a ship; perhaps made his bed for a number of years: regrets he is not at home, or he would have been certain of a sovereign to assist him out of his unfortunate and unforeseen situation; perhaps the unsuspecting gentleman, whom he is addressing, feeling for him, and believing his story, gives him half a sovereign. Then away flies the highflyer to the seat of the absent gentleman, ingratiates himself into the best graces he can of the servants, asserting the same false story to them, and, garnished with the last half sovereign given by Mr. So-and-so, generally succeeds in obtaining a belly full of meat and strong beer; and should the butler happen to be a tender-hearted, sympathising, unsuspecting, individual, perhaps a good set-out of toggery (clothes) into the bargain. This is often practised after a heavy gale at sea. Others assume that of burnt-out farmers or shopkeepers, &c. Some of the keepers of those lodging-houses are regular fences, will buy anything, and if it does not suit them they will soon find others who are ready to buy it of whatever description it may be. There requires a thorough reform in those detestable places. Some of them are little or no better than the lowest of brothels, and lodging every or any person who has either threepence in copper or any other articles of not less value; a teaspoon, or anything the tramper may have picked up through the day. It would be much better if a small licence was laid upon them, and also a penalty imposed for every vagrant or lodger found within his house, without first having a check from the constable or other person appointed to give them to the tramper applying for the same; and also the constable or other persons appointed, to have a printed book, with forms ready to fill up with the age of the applicant, trade, name, &c., where come from, whither going, description of dress, &c., and to insert the name of the party on one part, and keep the counterpart in the book; the other to be given to the vagrant for admission into the lodging-house. This would greatly facilitate the capture of a prisoner, by giving notice to the different persons appointed to issue those checks or tickets, and would also in a great measure put down tramping altogether. There is also another class of persons who travel about the country with packs and baskets, not for the sake of selling the goods they carry, but as an excuse for travelling, some of them carrying perhaps common gin, burnt in the



oven, coloured and flavoured, and then sold out of bladders for smuggled brandy; this is done by a double tube being in the neck of the bladder, one of which contains a small quantity of the best brandy, from which the purchaser is generally allowed to taste, but the brandy actually bought comes from the tube which conducts the brandy or rather burnt gin, &c., out of the bladder; all this is generally done with a sort of half secrecy, for fear both the buyer and seller be detected in an illegal transaction, by defrauding the revenue, and our sovereign lady the Queen. Others travel about the villages in the rural districts for some time with their assumed pack, and ingratiate themselves into the confidence of some petty shopkeeper, and by-and-by draw out a small quantity of tobacco of a very superior quality and at a very small price; the unsuspecting shopkeeper is perhaps tempted to buy. The supposed hawker (but who has now assumed the character of a smuggler) states that he has only one pound by him, but he is stopping at such a place, a few miles distant, and shall on such a day receive a fresh supply from the vessel that supplies him; he also assures the purchaser that he can supply him with any quantity at the same price and quality: but he has to perform his business in so secret a manner that he must have the order for the quantity to be taken. I knew a person, a shopkeeper, possessed of more money than wit, who gave an order for tobacco to the amount of 6*l.* or 7*l.* worth, and went, on the day fixed by the assumed smuggler, the distance of six miles, into a low public house. The door being closed by the smuggler, a large parcel was produced, corded and packed very neatly and hard; the smuggler remarking this was the way they packed tobacco abroad: he then opened one end of the parcel, invited the unwary shopkeeper to draw some out and be satisfied it was the same as the pound he had bought before. The next step was to weigh it, which on being done, gave more satisfaction still to the honest (in all instances except cheating those prying lynx-eyed excise officers) shopkeeper; the parcel weighing three or four pounds more than was to be paid for; a new poke or sack had been purchased to cover this forbidden treasure, which was, I believe, sealed, and very carefully handed over to a carrier who travelled through the village which was doomed to receive this prohibited tobacco, without paying the duties imposed by an illiberal and unfeeling government. Next morning brought the illicit parcel under the roof of the poor shopkeeper, who had devoted the night, not in slumbering like the sluggard, but in finding out a place to hide his treasure from the Argus eyes of the excise officer. The hiding place being ready, the parcel was opened and uncorded, which occupied some time, being folded in two papers and doubly corded; this being at last accomplished, the contents fell on the innocent and (until then) honest shopkeeper's counter, who stood like a statue, unable to move for some time. Ultimately a rap was given at the door, the shopkeeper supposing it was the exciseman, began to clear off the contents, but, reader, *not of tobacco*: with the exception of half or three quarters of a pound, the remainder was a layer of new hay, then another of soil from one end to the other.

The following artful trick was played upon Sir Richard Birnie whilst acting as a magistrate at Union Hall, previously to his going



to Bow Street:—A working man picked up a 100*l.* note in the Borough, and not knowing the owner, placed it in the hands of Sir Richard, that it might be restored to the loser when he came forward to claim it. The note was advertised several times in the papers, of course without naming the number or date; and a few days after, a very respectably dressed man presented himself to Sir Richard, and stating that he had lately lost a note to that amount, inquired if the note advertised was then in court. Sir Richard replied in the affirmative. “Perhaps then,” said the applicant, “your worship will oblige me by examining the note; when if it be the one I have lost, you will see two small marks I invariably make in any notes I receive, just under the figures.” Sir Richard looked at it very closely, but could see no marks, and told the gentleman so. “They are very minute your worship.” “Yes,” said Sir Richard, “so you said before, but I cannot see anything of the kind.” “My eyes are younger than your worship’s, and perhaps you would be kind enough to allow me an instant’s inspection of it?” “Certainly,” said Sir Richard, handing the gentleman the note, and quite sure, at the same time, there were no such marks as the other had described. The applicant glanced at the note in a careless way for a mere instant, pronounced it not to be his, returned it to the magistrate, thanked him very politely for the courtesy shown him, and, bowing, left the court. A few hours after, another gentleman, equally respectably attired, made a similar application, stating that he had seen the advertisement in the papers, and had no doubt the note was his. “In that case,” said Sir Richard, “you will, of course, be able to state the date and number of the note?” “Most assuredly; the date was so-and-so, and the number such-a-number.” “Exactly,” replied Sir Richard, “those are the date and number; there cannot be a doubt that the note is yours; and if you will give a receipt for it, and discharge the expense of advertising, you may take it with you.” The gentleman acceded, pulled out an apparently well-stocked purse, paid what was demanded, gave the receipt, tucked the note into his pocket-book, and returning his thanks, took his leave. Next day, the real Simon Pure applied for his note, when a very awkward explanation, as may be imagined, ensued between the worthy knight and the loser. It is needless to say the first two applicants were sharpers and in league with each other; and that the mere cursory glance the first had been favoured with was sufficient to enable him to carry away the number and date in his head, and his *com-rogue* the note in his pocket.

Others travel in rural districts, and into the dale towns, with a pack composed of goods bought from shoplifters, and enter the houses of the different inhabitants for the purpose of inspecting the entrance to the premises, &c., and then, perhaps, the house becomes a plant. A great many burglaries are committed through the agency of these fellows, who make themselves well acquainted with the premises, give the information to the more adept thieves, contriving themselves to be at a distance from the place on the night the robbery takes place, and also ready with sufficient witnesses to prove an *alibi* should they be suspected. Should it be a robbery likely to turn out to much advantage, the thief is allowed to travel one round with the



hawker, who points out any difficulty that may be likely to occur. Most thieves now, as has already been noticed, take out a licence, which only costs 4*l.*, and prevents them very often from coming within the meaning of the Vagrant Act. These fellows, too, as well as gipsies, pass bad money, which is generally either made or finished by the latter class, whose flash word for it is "*gammy lowr*;" before they utter it they pass it through a raw potatoe. A thief tries his hand in different ways; at one place he will be attended by boys picking pockets; and many of them who now frequent races, fairs, and markets, are occasionally assisted by neatly dressed boys, whose apparent innocence disarms all suspicion. At other places you will see the same thief with a thimble table; he conceals the pea under the finger nail, and therefore wins all he bets, unless he allow a yokel (a countryman) to win a trifle to draw him on. These fellows also pass bad money. Chance is a thief's motto; and most of them expect to get lagged (transported) at some time or other. The price of a case (five shillings piece bad) from the smasher is about one shilling; an alderman (two and sixpence) about sixpence; a peg (shilling) about threepence; a downer or sprat (sixpence) about twopence,

Pocket picking, by men, is called buzzing, and by women, it is called tooling. The men pick pockets with a wire instrument, made almost like a wire for extracting corks out of the inside of bottles; it has three hooks at the bottom, all turned inwards, with a spring on the top. When the thief thinks he has got hold of his booty, he touches the spring and the hooks close like a crab's claw.

Shirt pins and pins from a stock, &c. are drawn out by the little finger under the hand.

An old thief does not alter his dress for some time after he has had a lucky hit, for fear of suspicion.

*ho Quack Doctors.*—These are fellows who drop bills at people's uses, generally go decently dressed, and are called by the flash "*Crocusses*." One fellow once, when in a state of intoxication, declared he would poison no person, for he never gave the patient anything but salts and water with a little senna tea. Another sold vegetable pills, which he procured ready made, from rabbit warrens, and mixed them in the box with a little flour or meal.

*Cadgers Screeving.*—This is a system of marking on the flags with chalk, short sentences, such as the following: "Hunger is a sharp thorn and biteth keen." "I cannot get work, and to beg I am ashamed." Some also write backwards, and on some days make five or six shillings.

*Palmers.*—These are a set of fellows who generally go by two's, sometimes well dressed, and enter a shop; if a small one, one of the two keeps the shopkeeper "in a line," asking prices, or requiring a match for a pattern he (the thief) holds in his hand, whilst the other is palming articles under his hand, and from thence to his pocket. Sometimes a well-dressed woman enters the shop apparently a stranger to the men already in, who receives the property from the palmer, and contrives to walk out, stating she will call again in a few minutes; she is only going to Mr. So-and-so. Does he not live in such a street? The obliging shopkeeper does not keep his eyes on the men at the



time he is giving her the necessary directions ; and they are palming all they can lay their hands on. My old friend, Mr. Wilkinson, of Whitby, the superintendent of police at that place, followed two prisoners to Scarboro' for palming in a shop at Whitby ; and one, an old offender, was transported for seven years at Northallerton sessions, 18th October, 1842. His name was Charles Hardy ; his "jomer," or fancy girl, was also tried, but was acquitted. Others of the lower class of palmers visit shops in the rural districts, pretending to collect harp halfpence, or lion shillings, offering more than their value, to induce the unsuspecting shopkeeper to seek them out ; and when they are silly enough to empty a large quantity of copper or silver on their counters to search, the palmer is sure to assist and conceal as many as he can, and whenever he takes his hand from the copper or silver he always holds his fingers out straight to deceive the shopkeeper ; by this alone, sums from twenty to thirty shillings are made in a day.

*Stage Coach Robberies.*—These are generally committed by being what is called "put up :—" the thief either acts in concert with the coachman or guard, or by a discarded one, who gets connected with a gang of thieves, and knows what bank transmits cash, the time of their remittances, and also in what part of the coach the money is deposited ; if in the inside, the inside seats are all taken, and apparently by gentlemen unknown to each other, but who really are associates ; and when the work is finished, two leave the coach with the booty, the others stop to prevent suspicion, and to allow their comrades to escape ; and should the robbery be discovered before the last associates leave the coach, they, after satisfying the driver or guard they are innocent, immediately describe the parties who must have got the booty, as differently as circumstances will admit. Should the booty be carried in the front boot, the outside seats are taken ; a large carpet bag is taken up at an inn or some other place, the gentleman having previously taken his seat, mounts the coach, the bag being handed up by an associate, and a gentleman on the coach is kind enough to lend a hand to the owner of the bag, endeavouring to draw the attention of the driver until the bag is safely deposited in the boot. The bag contains a boy who has been trained up for the purpose, and who can open the bag at pleasure, and sometimes steals the booty alone, leaving the outside cover, but much oftener performs what is termed ringing the changes, viz., substituting a similar parcel, also of pretty near the same weight as the original one ; this being done, the gentleman owning the bag does not travel far ; the bag is handed out with a little caution, and should "coachee" look for his valuable parcel, all appears to be right : the gentleman tips him with a liberal fee : "coachee" supposes him to be a gentleman, "so he is," if money makes gentlemen. The others remain to lull suspicion, until a favourable opportunity offers for a good-bye also.

*Starring the Glaze.*—This is practised where valuable articles are exposed at the window, such as watches, jewellery, &c. It is generally performed by a party of two or three, who endeavour to divert attention ; one of these is sometimes a female ; but thieves do not often trust to their jomers (girls), though a woman can hide the person who stars, with her petticoats, better than a man. Sometimes a diamond



is made use of, or occasionally a small penknife is inserted through the putty near the corner of a pane of glass, for the purpose of cracking it; the wet finger is then applied, which carries the crack in any direction required; generally in the shape of an angle. The piece is wrought to and fro and removed; the hand is then introduced, or a wire hook, according to the nature of the goods inside.

*Spanking the Glaze.*—This is done by one of the well-dressed thieves, accompanied by a shabby-dressed thief, who appears to be a stranger and meets by chance. The thief affects intoxication, runs against the swell gentleman, and between them they break the bottom square of glass. The shopkeeper runs out, the swell asserts how he has been treated by that infamous drunkard; and if no policeman be at hand, insists on having one sent for; but if one be within sight, contrives to enter the shop, buys perhaps something of trifling value, throws down a remuneration for the window, “although that drunken vagabond broke it: he can better afford to pay than the shopkeeper can to loose it,” holds out threats he will have him before his worship the mayor, if he can only make him out; bows, scrapes, and bids good-bye. A watch is then placed upon the shop to give information when the window is repaired—the putty being soft can be removed at pleasure; sometimes a small piece of leather, containing a little pitch, is applied to the glass to prevent it falling, *or a little treacle to coarse paper*; there is also a method to soften putty in a very short space of time by a chemical preparation, perhaps better not to name here.

*Culing.*—This is performed during races by stepping up on a carriage during the time the horses are coming in, and snatching reticules, silk bags, &c., from the seats of the carriage, the attention of the ladies being drawn to the winning horse.

*Shop Bouncing.*—This is performed in various ways, but generally by two, who walk into a country shop, where there is an old woman and a candle, buy some trifling article, drop a sixpence, get the old woman to bring the candle round to look for it, while the other fellow is filling his pockets with every thing he can secrete. At other times this is performed early in a morning, and by one person, the shop having been planted previously, the thief having ascertained the shop only contained one boy, or assistant, and the master; he therefore, watching his opportunity, enters the shop, makes a small purchase, tenders perhaps half-a-crown or a crown piece, the boy goes to his master or some other place to obtain change, and even in some instances, requests the thief to look to the shop during his absence, which injunction is complied with to the very letter, the thief of course taking no more than he can carry.

*Gammy Venders.*—Those are fellows who boil up fat and a little soap over night, run it out in a cloth, and afterwards mould it like Windsor soap, hawk it about for sale, carry a bag or basket, and when opportunity offers prig or steal a coat, cloak, silk handkerchief, &c., out of the passage. Should one of them have a chance he introduces himself into the kitchen to the servants, offers them scent, hair oil, needles, &c., for a little broken meat; the servant accepts his offer; during the time she is supplying him with this, he perhaps supplies



himself with a teaspoon, or any other article, but he never takes anything out of his reach.

The tools used and required for housebreaking are a "darkey" (lantern), a crow-bar, a centre-bit, keys, skeletons, picklocks, saw, lucifers, knife, pistols, nux vomica, or prussic acid, the use of which I will shortly describe. The "darkey" is often made with two small holes at the bottom to admit of air, being much safer from observation than a covered ventilator at the top, which sometimes emits a stream of light therefrom, and consequently attracts attention. The crow-bar is made with one end like a chisel, and the other curved; its use is to force an entrance, by wrenching open the doors, drawers, boxes, &c. In forcing open drawers, a piece of cloth is thrown over them, which in a great measure prevents the noise. The centre-bit is a very essential engine in what is termed "panelling," or boring holes in a door with great expedition, when the burglar, by applying a pocket knife from hole to hole, takes out the panel, and either opens the lock, or puts in a boy who admits the remainder of the burglars; this is seldom resorted to, and never where the burglar can work with his keys and picklocks. The great object with the thief is, besides obtaining the booty, to give or leave no trace of the property stolen, and whenever opportunity offers, to lock the door again with the skeleton or keys. I had a case of this description on my hands very recently. It was a regularly planted burglary, and on the first examination of the premises no trace appeared to have been left to show either the ingress or egress of the thieves, the doors all being found fast as usual; but on removing the lock of the outer door, I found part of a skeleton key, recently broken and left in the lock. This at once showed the manner in which the premises had been entered; there were still two other locks before the thief could arrive at the booty, one of which had been opened by a picklock, or skeleton key, the other was forced by a sort of crow-bar.

I apprehended a person on suspicion, and in his house I found a crow-bar, which I have no doubt was the one that forced the lock, the marks of the same corresponding to a hair's breadth; I also found other property in his house, for which he was tried at the general quarter sessions of the peace held at Northallerton, on the 18th of October, 1842, found guilty, and sentenced to fourteen years' transportation.

*The Saw.*—This is seldom or never used except in cracking the house of a person who perhaps has gone to chapel or some other place, leaving the house empty, and where the lock or bolt is found to be so strong as not to be forced with the crow-bar. A hole is then bored near the lock with a centre-bit; the saw, which is called a key-hole saw, from the narrowness of it, is then introduced, and the piece of the door on which the lock is fixed, is cut out. A pocket knife is always carried, and answers more purposes than one—in cases of emergency prevents tales being told. Pistols are often taken more for ornament than use, with burglars, and are more frequently used for intimidation, to prevent an old lady or a servant girl from screaming, than for blowing out a person's brains. In very hazardous undertakings and where the booty is immense, they may be resorted



to, but then even only at the last extremity to prevent a capture. Nux vomica, commonly called hog's or ox's vomit, and prussic acid, are chiefly made use of to destroy animals of the noisy tribe, the worst of which to keep quiet is a little half-bred terrier, and of the feminine gender. A dog is far more easily silenced than a bitch.

A regularly planted burglary, and committed by thieves who have arrived at the top of their profession, is very bad to make out. A burglary is not the impulse of the moment like that of a footpad, but the greatest circumspection is used. A great deal of time has been employed before the burglar determines on his method of entry, and more so when it is not a put-up robbery. Many errands and other calls have been made at the house by confederates, such as hawkers and pedlars, &c., perhaps a cast is obtained from the key by being pressed into a piece of common soap.

The number of burglars varies according to the number of the family occupying the house to be cracked or broke.

*Right of a Constable to detain Chattels which a magistrate has ordered him to impound for production in evidence at the trial.]* In the case of *Lewis v. Roe*, which was tried in the court of Queen's Bench, on the 18th June, 1846, and is fully reported in the J.P. No. 25, vol. x. it was held that the magistrate's order was a sufficient excuse for the detention of the goods by the defendant, and that detention in obedience to it negatived any wish in the defendant to appropriate the goods to his own use, or in exclusion of the real owner. Not only was the defendant right in obeying the order of the magistrate, but it would have been criminal in him to have disobeyed it.

Then how long did the authority last which gave it? According to Lord Denman, whose opinion was expressed with remarkable emphasis, the defendant was bound to understand the magistrate's order, which was a verbal one, in the sense most conducive to the ends of justice, and to detain the goods for a reasonable time, so that the prosecutor should not, if delayed by unforeseen accidents or obstacles, find the material evidence gone. The verbal order of the magistrate was a sufficient authority; he had a right to make it; and there was no instance of such an order being impeached, because it was not in writing. The jury returned a verdict for the defendant. The conclusions from the case are, first, That a verbal order of a magistrate, for impounding goods, in order that they may be produced in evidence is good; second, That such an order is to be understood in the sense most conducive to the ends of substantial justice. Magistrates, therefore, will do well not to give a written order for such a purpose; and constables should, in cases of doubt, qualify their refusal by an expression of readiness to produce the goods before the magistrates, and give them up if they will make an order to that effect.

On apprehending a prisoner charged with an offence, and particularly with "felony," it is the duty of the officer to charge him with the offence in a clear and distinct manner. Care should also be taken not to draw a confession from a prisoner by unfair means, such as



threats, or by holding any hopes for mitigation of punishment, on confession, &c.

But at the same time it is incumbent on the officer, after duly charging the prisoner as above, to hear any statement he may make, and also to take it down in writing, and should he after that bring forth new weapons against himself it is the duty of the officer to use them as such, and to aid by every lawful expedient the detection of the guilty as well as the relief of the innocent.

Sir Peter Laurie said, on a case brought before him, where the officer had cautioned a prisoner, "There was no occasion to make any arrangement with the party accused; an officer should not try to get anything out of a prisoner, but if he voluntarily confess, he should listen without giving any caution, for the sake of justice and for the sake of the public; to check an admission of guilt was to frustrate justice."

The 18th section of the 11 & 12 Vict. c. 42, concludes with a proviso, that "nothing herein enacted or contained shall prevent the prosecutor in any case in giving in evidence any admission or confession, or other statement of the person accused or charged made at any time, which by law would be admissible as evidence against such person."

*Right of a Prisoner before trial to Property found on him and not connected with the charge.*] In the great majority of cases where property is found upon a prisoner which does not relate to the offence, the constable takes possession of it. If applied to for it before trial by the prisoner's relatives or friends, he tells them that it shall be given up if the prisoner is acquitted, and if applied to after conviction, he quietly tells them that it is not theirs, but is forfeited to the crown: and perhaps for the want of this very property, the unfortunate, and perhaps innocent prisoner, has gone undefended and is transported. It is idle to say, that under such circumstances a prisoner before trial may apply to the judge who tries him for an order for the restoration of his property; this may be too late; he may have occasion to bring witnesses from a distance; his case may require some days in getting up; he may be removed for trial at a distance from the place where his property could with advantage to his defence have been employed; and in the absence of the means to engage professional assistance, he may (not knowing that the judge would order the money to be restored) have abandoned all hope of being defended. To obviate all this inconvenience and injustice, the magistrates, on the preliminary examination before them, should inquire if any property has been taken from the prisoner not in any way connected with the charge, and if they find that any has been so taken, they should order it to be at once restored; remembering that an accused has the same right to facilities in rebutting a charge that a prosecutor has to make it, and that whilst the only object in committing a party to prison prior to his trial is to insure his appearance at the proper time, no man by the law of England is to be deemed guilty until he is found to be so, either by his own confession or the verdict of a jury.

A case has occurred which forcibly points out the injustice of depriving an accused of the property which he has about him at the



time of his arrest, and which has nothing to do with the offence charged. It is that of the *Queen v. Griffiths*, reported in 8 J. P. 66, in which an application was made to Mr. Justice Williams, sitting in the Bail Court, for an order on the gaoler of Haverfordwest to give up to the defendant (who, since his apprehension, has been admitted to bail) a sum of 20*l.*, which had been taken by the gaoler from the prisoner, and was then in the gaoler's possession. It appeared the defendant was charged with felony in stealing some cattle. According to the statement of counsel, there was hardly any pretence for the accusation, for it appeared that the cattle alleged to have been stolen were the cattle of the prisoner, which had been driven off his own farm to avoid being distrained upon, and that the suggestion of felony was, that these same cattle had before then been taken as a distress by the defendant's landlady, though restored to the defendant's possession, which former distress, it was answered, was merely colourable, to avoid the property being taken under an execution by other parties: the cattle had not been disposed of by the prisoner. Here then at least was a claim of right, and without wishing to prejudge the case, which now stands for trial at the next sessions or assizes, we should say that the charge must altogether fail. But here is the man's money taken from him, and in the hands of the gaoler, and thus he may be crippled in his defence. Mr. Justice Williams, however, had no summary jurisdiction over the gaoler, and was unable, therefore, to make any order, but he very properly expressed his opinion on the point: he said to the counsel, who informed him that all that the gaoler required, was the authority of the court: "if he wants a speculative opinion of mine, I have no hesitation in saying, that if the money has nothing to do with the charge, it ought to be given up. I believe it is the constant practice on circuit, indeed it is done every day, to order money to be given back to prisoners, which has nothing to do with the charge against them."

Whilst we are upon this subject it will be as well, with the view of showing the uniformity of opinion of the bench upon the point, to refer to what has been said hereon by other learned judges. In *Rex v. O'Donnell*, 7 C. & P. 138, which was a charge against the prisoner of stealing some silver spoons and other articles, he was not defended, but complained that he was prevented from employing professional assistance, by the act of the officer who searched him, in taking away all the money he had about him. Mr. Justice Patteson, in summing up, said, "The prisoner complains that his money was taken from him, and that he was thereby deprived of the means of making his defence. Generally speaking, it is not right that a man's money should be taken away from him, unless it is connected in some way with the property stolen. If it is connected with the robbery, it is quite proper that it should be taken; but unless it is, it is not a fair thing to take away his money, which he might use for his defence, I believe constables are much in the habit of taking away everything that they find upon a prisoner, which is certainly not right; and this is a rule which ought to be observed by all policemen and other police officers." So, too, in *Rex v. Kinsey*, 7 C. & P. 447, which was an indictment against the prisoner for rape; an application was made to the court to have a watch and other articles, which had been taken



from the prisoner by the policeman at the time of his apprehension, given up to him. Mr. Justice Patteson said, "Certainly, the property must be given up; it has nothing whatever to do with the charge: it ought not to have been taken." And Mr. Baron Gurney added, "it should not have been taken; it must be delivered up to the prisoner himself." Numberless cases could be cited of the expressions of strong disapprobation by the learned judges, of the practice of taking from prisoners money and other property which have nothing whatever to do with the case. However, the gross injustice of such conduct is clear in itself, and we trust that magistrates will always make it a point to see that this system of oppression is not practised. To deprive a poor man of his means of defence, is amongst the most unnatural and cruel acts of which any human being can be guilty (a);

8. *Constables, when and how punishable, and how protected.*

*How punishable, 97.*

*How protected, 99.*

*Actions against constable, 102.*

*How punishable.*] By 5 & 6 Vict. c. 109. s. 13, every person qualified and liable to serve, and who shall be chosen by the justices to serve, the office of constable, and shall be duly summoned to be sworn, and to take upon him the said office, and who shall refuse, or without reasonable cause, to be allowed by the said justices, neglect to attend and to be sworn as constable, or to find a qualified substitute to be sworn in his stead, shall, upon conviction thereof before two justices, forfeit and pay any sum not more than ten pounds; and every person who, after being sworn as constable, shall wilfully neglect to act in the execution of his office, shall, upon conviction thereof before two justices, forfeit and pay for every such offence any sum not more than five pounds.

By stat. 5 & 6 Will. 4, c. 76, s. 80, if any constable of any borough shall be guilty of any neglect of duty or of any disobedience of any lawful order, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence be liable to be imprisoned for any time not exceeding ten days, or to be fined in any sum not exceeding forty shillings, or to be dismissed from his office, as such justices shall in their discretion think meet.

By stat. 2 & 3 Vict. c. 93, (as to county constables) s. 12, every constable appointed under this Act who shall be guilty of any neglect or violation of duty in his office of constable, and shall be convicted thereof before any two justices of the peace for the county, shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary then due to such offender, or, in the discretion of the justices by whom he shall be convicted, may be imprisoned with or without hard labour, for any time not more than one calendar month.

A breach of duty by a constable is in many instances punishable by indictment, as where, upon the commission of a burglary, the constable refused to make a hue and cry according to a

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(a) See *Justice of the Peace*, No. 7, vol. ix. where the case is noticed more fully.



requisition made to him. So a constable may be indicted for not obeying the warrant of a justice, or for not returning a warrant. So where the defendant suffered a street-walker to escape out of his custody, the judgment for the misdemeanor was confirmed. And where the constable failed to carry a person to prison, whom the justice had committed for further examination, he was held to be indictable, although he produced his prisoner at the time of the next hearing.

So a person may be indicted for not doing his best as constable to apprehend offenders, and a party is subject to such a proceeding for not aiding the constable when he is called upon to give his assistance. I would also suggest here for all officers and constables to avoid as much as possible drinking and smoking in public houses with those you are likely to come in contact with, and by no means to allow them to treat you, nor yet the landlords, for depend upon it they would not pay for your glass were you not an officer. When landlords treat officers they call it keeping them sweet.

A case was tried before Mr. Baron Alderson, in which the defendant was indicted for refusing to assist a constable to suppress a riot. The learned baron, in summing up to the jury, said: "The offence imputed to the defendant is this, that Herbert being a constable, and there being a breach of the peace actually committed under his own view, he called upon the defendant to assist him in putting an end to it, and that he, without lawful excuse, refused to do so. It is no unimportant matter that the Queen's subjects should assist the officers of the law, when duly required to do so, in preserving the public peace; and it is right that the state of the law should be known, and that all parties violating the duty which the law casts upon them should be fully aware of the very serious risk they run in case of refusal. It is necessary you should be satisfied of three particulars: first, that the constable actually saw a breach of the peace committed by two persons or more. Secondly, that there was a reasonable necessity for the constable Herbert calling upon other persons for their assistance and support, and in this case there is no doubt that the constable could not by his own unaided exertions have put an end to the combat (a prize fight). Thirdly, the prosecutor must prove that the defendant was duly called upon to render his assistance, and that without any physical impossibility or lawful excuse, he refused to give it. Whether the aid of the defendant, if given, would have proved sufficient or useful is not the question or the criterion. Every man might make that excuse, and say that his individual aid would have done no good, but the defendant's refusal may have been, and perhaps was, the cause of that of many others. Every man is bound to set a good example to others by doing his duty in preserving the public peace" (a).

A constable is liable to the following penalties for neglect of duty, viz. :

To a penalty of 40s. for neglect of duty under 19 Geo. 2, c. 21, s. 7. relating to profanely swearing in the constable's presence.

To a penalty of 5*l.* for neglect of duty under the 5 Geo. 4, c. 83, ss. 6, 11, for neglecting to apprehend vagrants.

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(See *Reg. v. Brown*, 1 Car. & M. 314.



To a penalty of 20*l.* under the 6 Geo. 4, c. 80, for neglecting to assist excise officers.

To a penalty of 5*l.* under the Mutiny Act, for not billeting soldiers, &c.

To a penalty of 10*l.* under the 50 Geo. 3, c. 41, s. 21, for not apprehending unlicensed hawkers, &c.

To a penalty of 40*s.* under the 33 Hen. 8, c. 9, s. 15, relating to gaming houses.

To a penalty of 20*l.* under 25 Geo. 2, c. 36, s. 7, relating to disorderly houses.

To a penalty of 20*l.* under 55 Geo. 3, c. 51, s. 5, relating to county rates.

To a penalty of 5*l.* under the 5 & 6 Vict. c. 109, s. 13, relating to the appointment of constables.

To a penalty of 10*l.* under the 2 & 3 Vict. c. 93, s. 12, called the County Constabulary Act, for neglect or violation of duty.

To a penalty of 5*l.* under the same statute, s. 13, for neglecting to give proper notice previous to resigning office.

To a penalty of 20*l.* by sect. 9 of the same statute, relating to voting for members of Parliament.

To a penalty of 5*l.* under 1 & 2 W. 4, c. 41, s. 7 (Special Constable's Act), for refusing to take oath of office.

To a penalty of 5*l.* by sect. 8, of the same statute, for refusing to serve, or disobedience of orders.

To a penalty of 40*s.* by sect. 10, of the same statute, for not delivering up staves, &c.

To a penalty of 10*l.* under the 3 & 4 Vict. c. 50, s. 4, the Navigation Act, for neglect or breach of duty.

And to a penalty of 10*l.* under the 8 & 9 Vict. c. 126, for omitting to apprehend a wandering person deemed to be a lunatic.

To a penalty of 5*l.* for refusing to levy under the Health of Towns Act, (11 and 12 Vict. c. 63, s. 104).

Constables are liable to be indicted for neglect or breach of duty, unless a statute have provided some other specific remedy.

Public officers in all cases where they are directed by the sentences of competent tribunals to carry those sentences into execution, will be perfectly protected, provided they strictly obey the letter of their directions. But they must be careful that they do so obey the letter of their directions, for should they in any way deviate (notwithstanding the effect may be the same) they will be held as answerable as though they had acted without any previous authority; and if any one else than the party who is directed, or his servants or agents, should take upon himself to execute the sentence, he will be just as responsible as though he had committed the act upon an entirely innocent person.

*How protected.*] An assault upon a constable, in the due execution of his duty, or upon any person acting in his aid, is punishable on indictment, with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace (a).

By stat. 1 & 2 Will. 4, c. 41, (relating to special constables) s. 11, if any person shall assault or resist any constable, appointed by virtue

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(a) 9 Geo. 4, c. 31, s. 25.



of this Act, whilst in the execution of his office, or shall promote or encourage any other person so to do, every such person shall, on conviction thereof, before two justices of the peace, forfeit and pay for every such offence any sum not exceeding twenty pounds, or shall be liable to such other punishment, upon conviction on any indictment or information for such offence, as any persons are by law liable to for assaulting any constable in the execution of the duties of his office.

A constable is so far intrusted with a power over all actual affrays, that though he himself is a sufferer by them, and therefore liable to be objected against, as likely to be partial in his own cause, yet he may suppress them; and, therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender, in the same manner as if he were no way a party (*a*).

And if an affray be in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house, and he follow with fresh suit, he may break open the doors to take them (*b*).

A constable must only use the degree of force necessary for the occasion, and will be answerable for the excess; as where a constable had apprehended a boy fighting, and a bystander said, "you ought not to handcuff the boy," upon which the constable gave him a blow with a stick, and took him to the watch-house; in an action by the party struck, against the constable, it appeared that the plaintiff had placed himself before the defendant, for the purpose of preventing him from taking the boy to the watch-house. Burrough, J., said, "There can be no doubt that the constables were right in stopping the fight, and would be justified in apprehending any one who aided or abetted those who fought; but it did not appear that the defendant did either. If they thought that as the defendant was apprehending the boy, the plaintiff placed himself before the defendant to hinder him from doing so, that would justify the defendant in detaining the plaintiff at the watch-house, but not in beating him; but if the plaintiff only said, you have no right to handcuff the boy, the defendant was clearly the wrongdoer as to the whole" (*c*).

So when one of the Marshalls of the city of London, whose duty it was on the days of public meetings in the Guildhall, to see that a passage was kept for members of the corporation, directed a person in front of the crowd to stand back, and on being told by him that he could not for those behind him, struck him immediately on the face, saying he would make him; it was ruled that in so doing he exceeded his authority; that he should have confined himself to the use of pressure, and that he should have waited a short time to afford an opportunity for removing the party in a more peaceable way.

A coroner (*d*), and a magistrate upon a preliminary inquiry (*e*), may justify a forcible exclusion of a party from the room, even although he be the attorney of the person accused. Where, however, the inquiry is of a final and judicial nature, all persons have a right to be present (*f*).

(*a*) See 1 Hawk. c. 63, s. 15.

(*b*) Id. s. 13.

(*c*) See *Levy v. Edwards*, 1 C. & P. 40.

(*d*) *Garnett v. Ferrand*, 6 B. & C. 611.

(*e*) *Cox v. Coleridge*, 1 B. & C. 37.

(*f*) See *Daubney v. Cooper*, 10 B. & C. 237.



The following is a leading case of an assault upon a constable in the execution of his duty, which terminated with murder. A great number of persons assembled at a house called Sissinghurst, in Kent, and committed a great riot and battery upon the possessors of a wood adjacent. One of their names, viz., A., was known, but the rest were not known, and a warrant was obtained from a justice of the peace, to apprehend the said A. and divers persons unknown, who were altogether in Sissinghurst house. The constable, with sixteen or twenty other persons, his assistants, went with the warrant to the house, demanded entrance, and acquainted some of the persons within that he was a constable, and came with the justice's warrant, demanding A., and the rest of the offenders, who were in the house. One of the persons from within coming out, read the warrant, but denied admission to the constable, or to deliver A., or any of the malefactors; but going in commanded the rest of the company to stand to their staves. The constable and his assistants, fearing mischief, went away, and being about five rods from the door, several persons, about fifteen in number, issued out and pursued the constable and his assistants. The constable commanded the peace, but they fell on his company, killing one and wounding others, and they then retired into the house to their companions, of whom A. and one G., who read the warrant, were two. For this A. and G., with those who had issued from the house, and others, were indicted for murder, and these points were resolved by the court of King's Bench:—1st, That although the indictment was that B. gave the stroke, and the rest were present aiding and assisting, and though in truth C. gave the stroke, or it did not appear upon the evidence which of them gave it, but only that it was given by one of the rioters; yet that such evidence was sufficient to maintain the indictment, for in law it was the stroke of all the party, according to the resolution in *Mackalley's case*, 9 Rep. 66. 2nd. That in this case all that were present and assisting the rioters, were guilty of the death of the party slain, although they did not all actually strike him or any of the constable's company. 3rd, That those within the house, if they abetted or counselled the riot, were in law present aiding and assisting, and principals as well as those that issued out, and actually committed the assault; for it was but within five rods of the house and in view of it, and all done as it were at the same instant. 4th, That there was sufficient notice that it was the constable, before the man was killed; because he was the constable of the village, and because he notified his business at the door before the assault; and because, after his retreat and before the man was slain, he commanded the peace. 5th, It was resolved that the killing the assistant of the constable was murder as well as the constable himself. 6th, That those who came to the assistance of the constable, though not specially called thereunto, were under the same protection as if they had been called to his assistance by name. 7th, That though the constable retired with his company upon the non-delivery up of A., yet the killing of the assistant in that retreat was murder; because the retreat was one continued act in pursuance of his office, being necessary when he could not obtain the object of his warrant; but principally because the constable, in the beginning



of the assault, and before the man was struck, commanded the peace. In the conclusion, the jury found nine of the prisoners guilty, and acquitted those within, not because they were absent, but because there was no clear evidence that they consented to the assault, as the jury thought (a).

A person of the name of John Thom, who called himself Sir William Courtney, and who was insane, collected a number of persons together, having a common purpose of resisting the lawfully constituted authorities, Thom having declared that he would cut down any constable that came against him. Thom, in the presence of the two prisoners, afterwards shot an assistant of a constable, who came to apprehend Thom under a warrant.

It was held by Lord Denman, C. J., that the prisoners were guilty of murder, as principals in the first degree, and that any apprehension that they had of personal danger to themselves from Thom was no ground of defence; that Thom and his party had no distinct or particular object in view, when they assembled together and armed themselves.

*Actions against constables.]* Before an action can be brought against a constable for anything done by him in obedience to a justice's warrant, a demand for a perusal and copy of the warrant must be made upon him; if he do not give it within six days the plaintiff may bring his action against the constable alone; but if he give a copy of the warrant then the justice must also be made defendant in the action, otherwise the constable, on proof of the warrant at the trial, shall have a verdict; or if the plaintiff make the justice a party, the constable shall still be entitled to a verdict, but the plaintiff, if he recover against the justice, shall also recover against him any costs he may have been obliged to pay to the constable, 24 G. 2, c. 44, s. 6; and by the 8th section, no action shall be brought against any constable acting as aforesaid, unless commenced within six calendar months after the act committed. The law has anxiously afforded considerable indemnity and protection to constables acting in the discharge of their official duties; and on executing the warrant of the convicting justice, he is, by 21 James 1, c. 12, s. 5, entitled to the same privilege as the justice, as to giving the special matter in evidence under the general issue, and the right to double costs if a verdict be found for him, but now altered by 5 & 6 Vict. c. 97, s. 2, as to double costs. It is but reasonable and just to protect and relieve them from the consequences of their errors when they exercise their office conscientiously.

By the statute 7 Jac. 1, c. 5, made perpetual by 21 Jac. 1, c. 12, s. 5, "A constable or other officer sued for anything done by virtue of his office, is entitled to double costs if he obtains a verdict, or if the plaintiff be nonsuited or suffer a discontinuance." By the same Act, s. 5, the action must be laid within the county where the trespass or fact is done and committed, and not elsewhere. In a case arising on the former Malicious Trespass Act, two constables were sued in Middlesex for an act done in Surrey, and upon the fact so appearing, Abbot,

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(a) See *Sissinghurst house case*, 1 Hale. P. C. 461.



C. J., immediately directed the defendants to be acquitted (*b*). And in another case, where an action is brought against a constable in London for apprehending a person on a charge of forgery in Middlesex, without a warrant, and with very slight cause of suspicion, it was held by the same learned judge that the defendant was entitled to an acquittal, for although he had not been called upon to act, still he might have thought it his duty to act in the capacity of constable; and that by the words in the statute, "by virtue of his office," was meant that he was acting under colour of his office, intending to act in the character of constable (*c*).

But by the 5 & 6 Vict. c. 97, s. 2, it is enacted, "That so much of any clause, enactment, or provision, in any public Act or Acts, not local or personal, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party, shall or may be recovered, shall be and the same are hereby repealed."

By the same statute, 7 Jac. 1, c. 5, all persons who act in the aid and assistance or by the command of the constable, are equally entitled to the same protection in any action that may be brought against them; and whether they act merely in aid of the constable or as prime mover in the transaction, is a proper question for the consideration of the jury.

But if a constable exceeds the authority given him by the warrant he is not within the protection of the statutes; as where certain officers, in order to levy a poor's-rate under a warrant of distress, granted by two magistrates, broke and entered the house, and broke the windows, &c., it was held that they might be sued in trespass, without a previous demand of the perusal and copy of the warrant, according to the statute; for the justice in this case could not be liable for the excess of authority committed by the officer.

But, as has been noticed under the head "Distress Warrant," had the penalty or any part thereof been vested in the Crown, the officer would have been justified in breaking open the doors.

The following case, which was tried before Tindal, C. J., at the Stafford Assizes, July 27th, 1842, will be a guide as well as a valuable lesson to officers and constables: *Mackay v. Storrier*.—This was an action of trespass for false imprisonment; the defendant pleaded not guilty by statute. The plaintiff was a publican and boat owner, and the defendant the superintendent of the police at Stoke-upon-Trent. It appeared that the plaintiff was taken into custody by the defendant on Monday night, the 27th of September, on a charge of receiving deal boards, knowing them to have been stolen. He was placed by the defendant in the lock-up house for three days; and it appeared that the magistrate sat on the two following days at places near the lock-up house, and was actually at the lock-up house on the second day in his judicial capacity, and was never applied to by the defendant to hear any charge against the plaintiff, until the third day, when no evidence was offered, and he was discharged. Damages twenty pounds.

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(*b*) *Middlesex Sitings*, Nov. 1, 1826.

(*c*) See *Straight v. Gee*, 2 Star. 445.



The defendant, a constable, who had taken the plaintiff to gaol, under a magistrates warrant, was called upon, under 24 G. 2, c. 44, s. 6, for a copy of the warrant, and perusal of the original. The defendant gave the plaintiff a copy, but was unable to grant a perusal of the original, because it was retained by the gaoler for his own protection. The plaintiff, on information of the circumstance, made no objection to its non-production: held that he had dispensed with the production of the original (a).

### 9. *Expenses of Prosecutors and Witnesses.*

The following rules as to costs allowed for prosecutors and witnesses, have recently been issued by Her Majesty's secretary of state for the home department.

#### *Rules and Regulations as to the Rates and Scales of Payment of Costs, Expenses and Compensations to Prosecutors and Witnesses.* [Dated 9th day of February, 1858.]

WHEREAS it is expedient to make regulations as to the rates and scales of payment according to which costs, expenses, and compensations shall be allowed and ordered to be paid under the Act of the seventh year of the reign of King George the IVth, cap. 64, and divers other Acts of Parliament authorising such payments to prosecutors and witnesses, and to persons attending courts in obedience to recognizances or subpoenas in the cases of criminal prosecutions, for their travelling expenses and trouble and loss of time incurred in attending such courts, and also to make regulations as to the rates and scales of payment according to which certificates may be granted by the examining magistrate or magistrates in respect of the travelling expenses of prosecutors, and witnesses for the prosecution and other persons, of attending before such magistrate or magistrates, and of compensation for trouble and loss of time therein in the cases aforesaid: And whereas to the end aforesaid, it has become necessary to revoke divers regulations made under the 26th section of the said Act hereinbefore recited: Now I, the Right Honourable Sir George Grey, acting under and in pursuance of a certain Act of Parliament made and passed in a session of Parliament holden in the fourteenth and fifteenth years of the reign of Her present Majesty, intituled "An Act to amend the Law relating to the Expenses of Prosecutions, and to make further provision for the Apprehension and Trial of Offenders in certain cases," do revoke, annul, and make void, all rules and regulations made under the said 26th section of the said Act, whereby any costs, expenses, and compensations may be allowed or ordered to be paid to such prosecutors and witnesses, or other persons attending on recognizance or subpoena, for their travelling expenses, trouble, and loss of time in attending before such courts or before such examining magistrate or magistrates, to a larger or greater amount than the allowances hereinafter authorized

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(a) *Atkins v. Kilby*, 11 A. & E. 771.



to be made in that behalf: And I do make, constitute, and appoint the following rules and regulations to be observed by all courts and magistrates, and the officers and clerks of such courts and magistrates, and by all others whom it may concern, as to the rates and scales of payment of such costs, expenses, and compensation; and I do direct that the same shall take effect and be in force in all places where the same may be capable of taking effect, that is to say—

1. I do make, constitute, and appoint the following rules and regulations as to the rates and scales of payment according to which such certificates may be granted, by such examining magistrate or magistrates, in respect of the travelling expenses of prosecutors and witnesses, for the prosecution, of attending before such magistrate or magistrates, and of compensation for their trouble and loss of time therein in the cases aforesaid, namely:—

PROSECUTORS AND WITNESSES.

*Attendance before the Examining Magistrates.*

| There may be allowed to prosecutors or witnesses, being                                                                                                                                                                                                                                                                                                                                                                       | £ | s. | d. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| members of the profession of the law or of medicine, if resident in the city, borough, parish, town, or place where the examination is taken, or within a distance not exceeding two miles from such place, for their loss of time and trouble in attending to give professional evidence on such examination, but not otherwise, a sum in the discretion of the magistrate or magistrates, for each attendance not to exceed | 0 | 10 | 6  |
| If such prosecutor or witness shall reside elsewhere, then a sum for the same not to exceed                                                                                                                                                                                                                                                                                                                                   | 1 | 1  | 0  |
| And for mileage, a sum per mile each way, not to exceed                                                                                                                                                                                                                                                                                                                                                                       | 0 | 0  | 3  |
| To prosecutors and witnesses not hereinbefore provided for, resident in the city, borough, parish, town, or place where the examination is taken, or within a distance not exceeding two miles from such place, for their trouble and loss of time in so attending, there shall be allowed a sum for each day, not to exceed                                                                                                  | 0 | 1  | 0  |
| If resident elsewhere and beyond the distance of two miles, or if such prosecutors or witnesses shall be necessarily detained from home, for the purpose of the examination, more than four hours, a sum at the like discretion, not to exceed                                                                                                                                                                                | 0 | 1  | 6  |
| If they shall be necessarily detained from home more than six hours, then a sum at the like discretion, not to exceed                                                                                                                                                                                                                                                                                                         | 0 | 2  | 6  |
| When he or they shall reside at such a distance from the place of examination as to render it necessary that he or they shall sleep from home, then at the like discretion, a sum for the night, not to exceed                                                                                                                                                                                                                | 0 | 2  | 6  |
| There may be allowed for mileage, as follows:—                                                                                                                                                                                                                                                                                                                                                                                |   |    |    |
| If the prosecutor or witnesses reside at a greater distance than two miles from the place of examination, and the whole or any portion of the journey can be per-                                                                                                                                                                                                                                                             |   |    |    |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |   |    |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| formed by railway, second class fare for such whole, or portion of the journey, as the case may be; and for a journey, or part of a journey, performed otherwise than by railway, a sum not to exceed per mile, each way                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | £ | s. | d. |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 0 | 0  | 3  |
| <i>Attendance at courts of assize, oyer and terminer, jail delivery, general session of the peace, &amp;c.]</i> In pursuance of the power in me vested, I do make the following rules and regulations as to the rates and scales of payment of costs, expenses, and compensations to be allowed or ordered to be paid, under the said Act of the seventh year of the reign of King George the Fourth, and other the Acts of Parliament aforesaid, to prosecutors and witnesses attending courts of assize, oyer and terminer, jail delivery, general session of the peace, or any other courts having power to allow such costs, expenses, and compensation to prosecutors and witnesses, and persons attending such courts, in obedience to any recognizance or subpoena in cases of criminal prosecutions, for their trouble, loss of time, and travelling expenses in so attending. |   |    |    |
| For the purposes aforesaid I do make, constitute, and appoint the following rules and regulations (that is to say); there may be allowed:—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |   |    |    |
| To prosecutors and witnesses, being members of the profession of the law or of medicine, attending to give professional evidence, but not otherwise, for their trouble, expenses, and loss of time, for each day they shall necessarily attend the court to give professional evidence, a sum not to exceed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1 | 1  | 0  |
| For each night the same as ordinary witnesses, and for mileage a sum not to exceed, per mile each way                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 0 | 0  | 3  |
| To prosecutors and witnesses not hereinbefore provided for, there may be allowed for their expenses, trouble, and loss of time in attending the court where the prosecution takes place, per day, a sum not to exceed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 0 | 3  | 6  |
| To the same, if entitled to mileage, for each night they may be necessarily detained from home for the purposes of the prosecution at any assizes, session of jail delivery, or session of oyer and terminer, a sum not to exceed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 0 | 2  | 6  |
| To the same for each night they may necessarily be detained from home for the purposes of the prosecution at a session of the peace                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 0 | 2  | 0  |
| To the same for mileage there may be allowed as follows:—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |   |    |    |
| If resident more than two miles from the court where the prosecution takes place, if the whole or any portion of the journey can be performed by railway, second-class fare for such whole or portion of the journey, as the case may be, and for a journey or part of a journey performed otherwise than by a railway, per mile, each way, a sum not to exceed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |   |    |    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 0 | 0  | 3  |



In computing the amount to be allowed for mileage, under any of the regulations herein contained, I do direct that no greater allowance be made than at the rate of 3*d.* per mile each way by the nearest available route.

I also direct that no prosecutor or witness, allowed for mileage under any of the regulations herein contained, shall be allowed for loss of time occasioned by his or her omission to avail himself or herself of a public conveyance, if available.

I further direct that no prosecutor or witness be allowed, under any of the regulations aforesaid for his attendance, loss of time, trouble, or expense, in more than one case on the same day.

*Illness.*] In case of the illness or inability of any prosecutor or witness to travel without some special means of conveyance, it shall be lawful for the court to depart from the foregoing rates of allowances, and to make such other allowances as the justice of the case shall require.

*Attorneys.*] I authorize the following payments to be made to attorneys for the prosecution, giving evidence, over and above the allowances so made to them as attorneys:—

Such attorneys may be allowed, a sum not exceeding - 0 6 8

If, in the opinion of the proper officer of the court, such evidence was necessary, and saved the attendance of another witness.

*Scientific persons.*] And whereas it may become necessary, in certain cases, that scientific persons, unacquainted with the facts to be given in evidence upon the prosecution, may be required to attend as witnesses, in order to state their opinion upon matters of science in issue on such prosecutions; and it is reasonable in such cases, that the foregoing rates of allowance should be departed from, I hereby direct that the allowances to be made to such persons shall be subject to the decision of the court before whom such persons may be examined, which may direct such allowances as to such court may appear reasonable.

*Interpreter.*] Whenever an interpreter shall be employed to interpret on the part of the prosecution, it shall be competent for the court before whom such interpreter shall be so employed to make him such allowances as to such court shall seem reasonable: Provided always that this regulation is not to interfere with any regulations in force (where such now exist) for the remuneration of interpreters.

#### EXCEPTIONS.

Under the circumstances herein specified under the head of exceptions, I authorize a departure from the rules



and regulations herein contained, as well by the examining magistrate or magistrates as by the courts herein mentioned, except only in the case of an attorney for the prosecution giving evidence: Provided always, that whenever any allowances, hereinbefore authorized under the head of exceptions, shall have been made, the circumstances under which the general rate of allowances shall be departed from shall in all cases be fully specified by the proper officer of the court, or magistrate, upon the document by which such allowances shall be authorized. And, lastly, I do order that, notwithstanding anything herein contained, all lawful rules and regulations heretofore made and in force, under or by reason whereof allowances to a less amount than those hereby authorized are now payable in the cases hereinbefore provided for, shall be and remain in as full force and effect as if this order had not been made, and shall continue to apply to the persons and the circumstances thereby provided for, although such persons and circumstances may be comprehended within the terms thereof, and that the said rules and regulations shall so far remain unaffected by this order, and that nothing herein contained shall have the effect of increasing the amount of any rates or allowances which may be lawfully made under such rules and regulations; it being the true intent and meaning hereof that such rules and regulations shall be and remain unaltered, further or otherwise than in the reduction of allowances to prosecutors and witnesses where the rates thereof shall be in excess of those herein contained.

#### CONSTABLES AND JAILERS.

##### *Attendance before the Examining Magistrates.*

To prosecutors and witnesses being constables attending the bench of magistrates where such examination is taken on any police duty, and to constables paid by salary, and attending from a distance not exceeding three miles, there shall be allowed - - - Nil.

Unless the magistrate or magistrates shall certify that there were special reasons for making an allowance, and shall specify such reasons upon his or their certificate, and then a sum not to exceed for each day - - - 0 1 0

To prosecutors and witnesses being constables paid by salary, and not attending the magistrate or bench of magistrates on any police duty, for their trouble in attending such examination, from a distance greater than three miles, and not exceeding seven miles from



|                                                                                                                                                                                                                                                                                        |      |    |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----|----|
| the place where the examination is taken, a sum not to exceed for each day - - - - -                                                                                                                                                                                                   | £    | s. | d. |
|                                                                                                                                                                                                                                                                                        | 0    | 1  | 0  |
| To the same if attending from a distance greater than seven miles from the place where the examination is taken, a sum not to exceed for each day - - - - -                                                                                                                            | 0    | 1  | 6  |
| To prosecutors and witnesses being constables paid by salary, if necessarily detained all night for the purposes of the examination, a sum for the night, not to exceed - - - - -                                                                                                      | 0    | 2  | 0  |
| (The said allowances to prosecutors and witnesses being constables paid by salary, are to be conditional, upon the same being applicable for their personal benefit.)                                                                                                                  |      |    |    |
| To prosecutors and witnesses being constables necessarily travelling to the place of examination in discharge of any police duty, there shall be allowed for mileage -                                                                                                                 | Nil. |    |    |
| (Unless the examining magistrate or magistrates shall certify that there were special reasons for making an allowance, and shall specify the same upon their certificate, and then the same as other constables.)                                                                      |      |    |    |
| To prosecutors and witnesses being constables not attending the place of examination in discharge of a police duty, and entitled to be conveyed under 7 & 8 Vict. c. 85, s. 12, and able to travel by railway, there shall be allowed mileage as follows:—                             |      |    |    |
| To superintendents, inspectors, serjeants, and constables, the lowest amount per mile authorized by Act of parliament for their conveyance, and no larger sum ;                                                                                                                        |      |    |    |
| To prosecutors and witnesses being constables, able but not so entitled to travel, and not attending the place of examination on any police duty, there shall be allowed for mileage, railway-fare, the same as to ordinary witnesses ;                                                |      |    |    |
| To prosecutors and witnesses being constables not able to travel by railway, and not attending the magistrate or magistrates on any police duty, for every mile beyond four miles each way they shall travel to reach the place of examination, a sum not to exceed each way - - - - - |      |    |    |
|                                                                                                                                                                                                                                                                                        | 0    | 0  | 2  |
| To prosecutors and witnesses being constables, able partially to travel by railway, for every mile after the first four miles each way, in reaching such means of conveyance, and railway-fare as other constables, a sum not to exceed - - - - -                                      |      |    |    |
|                                                                                                                                                                                                                                                                                        | 0    | 0  | 2  |

*Attendance at Sessions or Assizes.*

|                                                                                                                                                                                                                                                                                           |   |   |   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| To prosecutors and witnesses, being constables and paid by salary, if resident within the city, borough, town, or place where such court is held, or within a distance not exceeding two miles of such place, a sum, in the discretion of the court, not to exceed for each day - - - - - |   |   |   |
|                                                                                                                                                                                                                                                                                           | 0 | 1 | 0 |



If resident elsewhere, and if they shall attend from a greater distance than two miles, a sum, in the discretion of the court, for each day not to exceed - - - £ s. d.  
0 1 6

To the same if they shall be necessarily detained all night for the purposes of the prosecution, a further sum for the night not to exceed - - - - - 0 2 0

If such prosecutors and witnesses shall be chief constables or superintendents attending from a distance greater than three miles, and they shall be necessarily detained all night for the purposes of the prosecution, instead of the foregoing allowances there may be allowed to them the same as ordinary witnesses.

(The said allowances to prosecutors and witnesses, being constables paid by salary, are to be conditional on the same being applicable to their personal benefit.)

To prosecutors and witnesses being constables who shall be entitled to be conveyed under the 7 & 8 Vict. c. 85, s. 12, and able to travel by railway, there may allowed for mileage as follows:—

To superintendents, inspectors, serjeants, and police constables, the lowest amount per mile authorized by Act of Parliament for their conveyance, and no larger sum;

To prosecutors and witnesses, being constables not so entitled to travel, there may be allowed railway-fare the same as to ordinary witnesses;

To the same if paid by salary, and where they are not able to travel by railway, for every mile beyond four miles each way they shall travel to and return from the court where the prosecution takes place, a sum not to exceed - - - - - 0 0 2

To the same if paid by salary, when able partially to travel by railway, for every mile after the first four miles each way in reaching such means of conveyance, and railway-fare as other constables, a sum not to exceed - - - - - 0 0 2

I further direct that no constable paid by salary be allowed for railway-fare not actually paid.

I do authorize payment to the officer of a jail whose duties require his attendance in the court where the prosecution takes place, for giving evidence on a former conviction, a sum not to exceed - - - - - 0 3 6

I do make the following regulations as to the compensation to be allowed in the cases of prisoners brought by writ of habeas corpus, or other lawful process, to give evidence for the prosecution.

To governors and officers of jails, in whose custody the prisoner is brought, as follows:—

To a governor, for his loss of time, trouble, and expenses, in bringing up such prisoner, for each day he may attend, the sum of - - - - - 0 12 0



|                                                                                               | £ | s. | d. |
|-----------------------------------------------------------------------------------------------|---|----|----|
| To other officers, for the same, the sum of - - -                                             | 0 | 6  | 0  |
| And for mileage, a sum, in the discretion of the court, not to exceed per mile each way - - - | 0 | 1  | 0  |

Provided always, that the above allowances shall not be made to any jailer or officer charged with the custody of prisoners for trial, at the place where such prisoner shall be required to give evidence, in respect of the time such jailer or officer shall, by virtue of his office, be required to be there present.

Given under my hand at Whitehall, the ninth day of February, One thousand eight hundred and fifty-eight.

(Signed)

G. GREY.

*10. Fees to Constables, &c.*

Fees and allowances under 5 & 6 Vict. c. 109 (as to petty constables), to clerks to justices and constables for the North, East, and West Ridings of the county of York and the county of Durham, as settled by the justices of and for each Riding, and the county of Durham, and approved by the Right Hon. Sir James Graham, Bart., one of Her Majesty's principal secretaries of state:—

**NORTH RIDING.**

*Fees and Allowances to Clerks to Justices.*

|                                                                                                | s. | d. |
|------------------------------------------------------------------------------------------------|----|----|
| For every notice to justices of special sessions for appointment of parochial constables - - - | 0  | 6  |
| For every original list of constables to be delivered to the clerk of the peace - - -          | 2  | 0  |
| For every copy of the same to justices - - -                                                   | 1  | 0  |
| Precepts to overseers, with instructional letter to return lists of constables - - -           | 1  | 0  |
| Allowance of each list of constables - - -                                                     | 0  | 6  |
| Appointment of constables - - -                                                                | 0  | 6  |
| Precepts to attend and be sworn - - -                                                          | 0  | 6  |
| Oath of office - - -                                                                           | 1  | 0  |

*Fees and Allowances to Constables.*

|                                                                                                                                                                                                                                                        |   |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| To the constable for service of every summons - - -                                                                                                                                                                                                    | 0 | 6 |
| For execution of each warrant - - -                                                                                                                                                                                                                    | 1 | 0 |
| Attending with the above before justices, where the distance does not exceed one mile - - -                                                                                                                                                            | 1 | 0 |
| Where the distance exceeds one mile, one shilling for the first mile, and sixpence for each additional mile (one way); and if several parties are included in the same summons and for the same offence, only one charge for travelling to be allowed. |   |   |



The following payments to be made at the discretion of the justices:—

|                                                                                                                        |   |   |
|------------------------------------------------------------------------------------------------------------------------|---|---|
| To every constable for apprehending any person charged with any offence, and conveying him to a justice - - -          | 1 | 0 |
| The allowance for mileage as above.                                                                                    |   |   |
| For the maintenance of the prisoner where there is no lock-up house, for each prisoner, if for twenty-four hours - - - | 1 | 6 |
| Where there is a lock-up house - - - - -                                                                               | 1 | 0 |
| For every shorter time, at the discretion of the justices.                                                             |   |   |

Attendance upon a prisoner not in a lock-up house, where necessarily in custody for twelve hours previous to his being carried before a justice, any sum not exceeding three shillings. Where, from the nature of the offence, or the number of prisoners, it may be necessary to employ more attendants, the like allowance to be paid to each attendant, upon the production of a certificate from the justices that such number of attendants was necessary. It shall be lawful for a magistrate, in any case in which it shall seem to him necessary for the ends of justice, to send a constable to obtain information prior to the issue of a warrant, in case of felony or misdemeanor; or if such warrant be issued it shall appear to him that after due diligence the person charged with the offence could not be found, to make such allowance to such constable as shall to him seem necessary, for his time any sum not exceeding five shillings per day, and for his travelling expenses any sum not exceeding sixpence per mile (one way).

E. C. TOPHAM,

*Deputy Clerk of the Peace.*

#### EAST RIDING.

##### *Fees and Allowances to Clerks to Justices.*

*s. d.*

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |   |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| Issuing notices to each of the justices of the division of a special session for the appointment of constables, or for uniting parishes, or annexing places, and preparing precept to overseers, obtaining magistrate's signature, and issuing it to the overseers, requiring return of men liable to serve, with notice of special session, and forms of return to accompany precept, allowance and verification of overseer's return of men liable to serve; summons of the persons chosen constables to appear and be sworn; appointments of one or more constables of the same place (whether ordinary or paid constables), and oaths of office and certificates thereof; and making and sending to the justices of the division and the clerk of the peace list of the constables appointed—total for each township, parish, or place - - - - - | 8 | 0 |
| Order for uniting parishes (to be paid equally by the parishes united) - - - - -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 5 | 0 |
| Copy of such order when required - - - - -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 1 | 0 |
| Order upon parishes to pay the above - - - - -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 1 | 0 |



*Fees and Allowances to Constables.*

|                                                                                                                                                                                                                                                                   | <i>s.</i> | <i>d.</i> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|
| To constable for service of every summons - - - -                                                                                                                                                                                                                 | 0         | 6         |
| For execution of each warrant - - - -                                                                                                                                                                                                                             | 1         | 0         |
| Attendance with the above before justices where the distance does not exceed three miles - - - -                                                                                                                                                                  | 2         | 0         |
| Where the distance exceeds three miles, one shilling for the first mile, sixpence for each additional mile (one way); and if several parties are included in the same summons or warrant, and for the same offence, only one charge for travelling to be allowed. |           |           |
| To every constable for apprehending a prisoner, and conveying him to justice - - - -                                                                                                                                                                              | 1         | 0         |
| The allowance for mileage as above.                                                                                                                                                                                                                               |           |           |

The following payments to be made at the discretion of the justices:—

For the maintenance of prisoners, where there is no lock-up house (for each twenty-four hours, and so in proportion for every shorter time)—

|                                  |   |   |
|----------------------------------|---|---|
| One prisoner - - - -             | 2 | 0 |
| Each additional prisoner - - - - | 1 | 6 |

Attendance upon a prisoner not in a lock-up house, where necessarily in custody for twelve hours, previous to his being carried before a justice, any sum not exceeding three shillings.

Where, from the nature of the offence, or the number of prisoners, it may be necessary to employ more attendants, the same allowance to be paid to each attendant, upon the production of a certificate from the justice that each number of attendants was necessary.

For the pursuit or conveyance of a prisoner, where the expenses are not otherwise provided for, and in cases where the justices think that some allowances ought to be granted, any sum not exceeding five shillings, or one shilling per mile (one way).

For maintenance of each prisoner, when confined in a lock-up house for twelve hours, ninepence per day, and so in proportion for any shorter time.

HENRY JOHN SHEPHERD,

*Deputy Clerk of the Peace.*

WEST RIDING.

*Fees and Allowances to Clerks to Justices.*

|                                                                                     | <i>s.</i> | <i>d.</i> |
|-------------------------------------------------------------------------------------|-----------|-----------|
| For every appointment of a paid constable, exclusive of stamp, if necessary - - - - | 5         | 6         |
| For every person chosen and sworn constable - - - -                                 | 3         | 6         |

But no township to be liable to pay the fees in respect of a greater number of such persons than ten.

The above fees to be a full compensation for all duties performed and expenses incurred by them under the Act.



*Fees and Allowances to Constables.*

|                                                                                               | <i>s.</i> | <i>d.</i> |
|-----------------------------------------------------------------------------------------------|-----------|-----------|
| For serving precepts upon overseers - - - - -                                                 | 1         | 0         |
| For attending special petty sessions - - - - -                                                | 4         | 0         |
| If above three miles, for every additional mile beyond that distance (one way only) - - - - - | 0         | 6         |
| For serving summonses upon persons chosen constables, each                                    | 1         | 0         |
| For attending to prove service the same allowance as for attending special sessions.          |           |           |

C. H. ELSLEY, *Clerk of the Peace.*

## COUNTY OF DURHAM.

*Fees and Allowances to Clerks to Justices.*

|                                                                                                                                                                                                                                                                                                  |   |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| Every precept to overseers to return list of persons liable to serve as constables; printed forms of return to accompany the same; notice to overseers of the day for holding special sessions for return of lists; warrant to high constable to appoint special sessions to receive lists - - - | 2 | 6 |
| Warrant to high constable for the appointment of a special session, for annexation of small parishes and extra-parochial places - - - - -                                                                                                                                                        | 5 | 0 |
| Order for annexation - - - - -                                                                                                                                                                                                                                                                   | 5 | 0 |

N.B.—These two items to be apportioned amongst the places annexed.

|                                                                                                                    |   |   |
|--------------------------------------------------------------------------------------------------------------------|---|---|
| Appointment of constables, each township, if not exceeding twenty names, and for overseers verifying return - - -  | 2 | 6 |
| For every twenty names in addition - - - - -                                                                       | 1 | 0 |
| Summons to every person chosen - - - - -                                                                           | 1 | 0 |
| Appointment of substitute - - - - -                                                                                | 1 | 0 |
| Swearing each constable or substitute - - - - -                                                                    | 1 | 0 |
| Certificate of appointment to be given to each constable or substitute - - - - -                                   | 0 | 6 |
| Every information for a penalty - - - - -                                                                          | 1 | 0 |
| Warrant or summons thereon - - - - -                                                                               | 1 | 0 |
| For every conviction - - - - -                                                                                     | 2 | 6 |
| Warrant of distress - - - - -                                                                                      | 2 | 0 |
| List of constables appointed for the division for magistrates and clerk of the peace, not exceeding twenty names - | 1 | 0 |
| For every additional twenty names - - - - -                                                                        | 1 | 0 |
| List of constables to be appointed for each township (for church doors) not exceeding twenty names - - -           | 1 | 0 |
| For every additional twenty names - - - - -                                                                        | 1 | 0 |
| Appointment of a paid constable - - - - -                                                                          | 1 | 0 |
| Duplicates and copies of all documents when required, one half of the original fee.                                |   |   |

*Fees and Allowances to Constables.*

|                                                                                                                                                               |   |   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| For executing every warrant or summons - - - - -                                                                                                              | 1 | 0 |
| Travelling for that purpose, and taking prisoner before a magistrate, or for attending on return of summons, for every mile going but not returning - - - - - | 0 | 6 |



WALTER SCRUTON,

*Deputy Clerk of the Peace.*

*North Riding  
of  
Yorkshire.*

against

on a charge of

Constable of

Sworn before me, this                      day of                      185  
and allowed the same.

\* Should the party not be apprehended strike out "and apprehending."

By the 7 Geo. 4, c. 64, s. 22, the expenses to be included in the certificate of a magistrate on the commitment of a prisoner for felony, are confined to such sums of money as shall seem reasonable



and sufficient to reimburse the prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate or magistrates, and to compensate them for their trouble and loss of time therein; and the amount of such expenses and compensation is to be ascertained by the certificate of such magistrate or magistrates, granted before the trial, or attendance in court, if they shall think fit to grant the same. The expenses stated in the certificate are, however, subject to the discretion of the judge who presides at the Crown end at the assizes (the allowance by the above section only extending to such sums as to the court shall seem reasonable.) The following scale of allowance is usually adopted:—

For loss of time and expenses—

To surgeons and professional men, being necessary witnesses, 1*l.* 1*s.* per day, if engaged the greater part of a day; if not, in proportion to the time actually occupied.

To chief constables and police officers, 7*s.* 6*d.* per day.

To petit constables, 5*s.* per day.

To other persons, 3*s.* 6*d.* per day.

And if the magistrate resides above four miles from the place of abode of the party attending (in addition to the above) 6*d.* per mile *eundo*, for the whole distance, towards the expenses of conveyance.

The fees paid to the magistrates' clerks may also be included in the certificate, and will be governed by a table of fees, settled by the magistrates at the sessions, and approved by a judge at the assizes under 26 Geo. 3, c. 14. It may be necessary to observe, that the above certificate can only be granted in cases of felony, and not in cases of misdemeanor; and should not include any expenses incurred in the apprehension of the prisoner, or indeed any charge whatever, except for the attendance before the magistrate and the fees to his clerk; and that magistrates have no power to make an order upon the treasurer for any sum of money relating to the apprehension of a prisoner, but only for the expenses of his conveyance to gaol under 3 Jas. 1, c. 10, s. 1, and 27 Geo. 2, s. 3. All other Acts of Parliament relating to costs and expenses in cases of felony being repealed.

*Form for Magistrates' Clerk.*

*North Riding of Yorkshire,* } The Queen on the prosecution of  
to wit, } A. B. against C. D. committed on the  
— day of —, 185—, on a charge of felony.

185

|                                           | £ | s. | d.    |
|-------------------------------------------|---|----|-------|
| To information and warrant thereon        | - | -  | 0 2 0 |
| To — summonses for witnesses              | - | -  | -     |
| Depositions of prosecutor and — witnesses | - | -  | -     |
| Examination of the prisoner               | - | -  | 0 1 0 |
| Mittimus of prisoner                      | - | -  | 0 1 0 |
| Recognizance to prosecute                 | - | -  | 0 2 0 |
| Notice thereof to prosecutor              | - | -  | 0 0 6 |
| Recognizances to give evidence            | - | -  | -     |
| Notice thereof to witnesses               | - | -  | -     |

£



I, the undersigned — one of Her Majesty's justices of the peace for the North Riding of Yorkshire, do hereby certify that the above bill of fees, amounting to — (being as per table of fees for the said riding) was paid to my clerk by the prosecutor, on commitment of the above-named prisoner to the gaol at Northallerton, on a charge of felony.

Given under my hand, the — day of —, 185—.

*Rewards for the apprehension of offenders, and compensation for expenses, exertions, and loss of time, are paid in the following cases:—* Murder; feloniously and maliciously shooting, or attempting to discharge any kind of loaded fire-arms at any other person, stabbing, cutting, or poisoning; or with administering anything to procure the miscarriage of any woman; rape; burglary; felonious housebreaking; robbery on the person (but not pocket-picking, nor sacrilege); arson; horse-stealing; bullock-stealing; sheep-stealing; or with being accessory before the fact to any of the above offences; or with receiving any stolen property, knowing the same to have been stolen.

7 GEO. 4, c. 64, s. 28.

*Certificate of Expenses, in the case of —.*

North Riding of Yorkshire, } The Queen on the prosecution of  
to wit, } — against — committed on the  
— day of —, 185—, on a charge of —.

Expenses incurred by — superintendent of police of —, in searching for and apprehending the above-named prisoner, and for exertions and loss of time in and towards such apprehension.

[Here insert the several items as actually incurred, to wit:]

| 185—.                                                                                                     | £ | s. | d. |
|-----------------------------------------------------------------------------------------------------------|---|----|----|
| Jan. 10. Paid for horse and gig, from Y. to L., twenty miles                                              | - | -  | -  |
| Expenses of self and assistant at L., and several other places                                            | - | -  | -  |
| Expenses of horse, and paid toll-bars on the road                                                         | - | -  | -  |
| 11. Expenses of horse all night at L.                                                                     | - | -  | -  |
| Paid inn bill for self and assistant all night at L.                                                      | - | -  | -  |
| Paid railway fare from L. to M., cab hire, &c.                                                            | - | -  | -  |
| Paid for assistance at M.                                                                                 | - | -  | -  |
| Paid inn bill and expenses at M. and other places                                                         | - | -  | -  |
| To A. B. superintendent of police — days, at 10s. 6d. per day in searching after the above-named prisoner | - | -  | -  |
| To C. D. constable — days "same," at 10s. 6d. per day                                                     | - | -  | -  |

£



At the foot of the account add the following:—

These are to certify that —, superintendent of police of —, maketh oath and saith, that he, this deponent, hath paid and expended the several sums above-named, and used due diligence in searching for and apprehending the said —, and that they the officers named in the annexed account, were necessarily engaged the time stated therein, in and towards such search and apprehension, and which the said — prays the same may be allowed him according to the said account.

(Signed)

*Superintendent of Police.*

Sworn before me, at the Castle of }  
York, in open court, this — }  
day of —, 185—.

Should one constable at a distance from the other incur expenses in searching for the same prisoner, they should make joint affidavit to the costs charged. It may also perhaps be as well to remark here, that the constable, before incurring any costs at all, should be particular and satisfy himself that there is sufficient evidence to justify the magistrate in sending the party suspected for trial, as no costs can be allowed by this statute unless the prisoner be committed.

The foregoing account can be received at any time during the assizes, either before or after the trial of the prisoner, and applies to any county in England. The most usual way is to wait until after the trial, but that is not imperatively necessary. The account must be taken to the judge's clerk, who swears the witnesses and the jury, to whom you will make affidavit, and pay him two shillings for the same; he will then forward the account to the judge presiding, who will sign it, and which will then be returned to you in order to be examined by the clerk of assize, for which you will pay five shillings; this, together with the two shillings you have already paid to the judge's clerk, he will add to the account, and will then give you an order on the sheriff for the whole amount. Ten shillings and sixpence per day is generally allowed to each and every constable employed during search, &c., if inserted in the account, as compensation for loss of time.

The following forms may be used for the conveyance of prisoners for the North Riding of York:—

The Treasurer of the *North Riding of Yorkshire*,

To the Police Officer of *Greta Bridge*, DR.

185—.

|                                                                                                                       | £ | s. | d. |
|-----------------------------------------------------------------------------------------------------------------------|---|----|----|
| To the apprehension of —, charged with —                                                                              | 0 | 1  | 0  |
| To conveying the bod of the same — from<br>— to Northellarton gaol, being the dis-<br>tance of — miles, at — per mile |   |    |    |
| To maintenance and keeping in custody —<br>night, at 1s. 6d. per night                                                |   |    |    |
| To order annexed                                                                                                      |   |    |    |

£



Allowed by me —, one of Her Majesty's justices of the peace in and for the said Riding.

\_\_\_\_\_  
Magistrate's Signature.

*Order upon the Treasurer.*

North Riding of Yorkshire, } To the treasurer of the said riding.  
to wit. }

You are hereby requested to pay the bearer the sum of — pound, — shillings, the amount of the annexed bill, and the same will be allowed in your accounts.

Given under my hand this — day of —, 185—.

\_\_\_\_\_  
Magistrate's Signature.

£

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*Of rewarding constables, and of their expenses and accounts.]* It is said to have been decided by Lord Tenterden, C. J., at *nisi prius*, (*Harrison v. Hewson*), that an express promise by a party who has been robbed, to a constable, to pay him a sum of money as a reward if he could find out and apprehend the thief, is not binding; a constable having no right to recover a reward for doing his duty.

In the case however of *England v. Davidson*, 3 Perry & D. 594, 11 A. & E. 586, which was an action by a constable to recover a reward, it was held, that the action would lie. In that case, the declaration stated, that the defendant had caused to be published a handbill, offering 50*l.* reward to any one who would give such information as would lead to the conviction of the persons concerned in a burglary in his house, and that the plaintiff gave such information as led to the conviction, &c., but that the defendant had not paid the above reward. The plea stated, that the plaintiff was a policeman of the district where the house was, and therefore that it was his duty to give the information without the reward. To this there was a demurrer; and Lord Denman, C. J., in delivering judgment, said that "the plaintiff may have rendered good service, beyond what he was bound to render as a policeman. Unless we see clearly that an agreement is contrary to public policy, we ought not to set it aside on such a ground." Judgment therefore was given for the plaintiff. Although this case does not go the full length of declaring that if a reward be offered, and the officer does nothing more than his ordinary duty to deserve it (though he be successful), he shall be entitled to receive it, yet it clearly shows that where he resorts to any exertions beyond those of his ordinary duty, he is as much entitled to receive it as any other person. The Act relating to special constables also enables magistrates to order the payment to them of reasonable allowances for their trouble, loss of time, and expenses. So too, by section 17 (already stated) of the 5 & 6 Vict. c. 109, the justices at quarter sessions are from time to time, subject to the approval of one of the secretaries of state, to settle a table of fees and allowances to



constables for the service of summonses and execution of warrants, and for the performance of such other occasional duties which may be required of the said constables, for which the said justices shall think that fees ought to be allowed; and by statute 41 Geo. 3, c. 78, s. 1, where special constables shall be appointed in England to execute warrants in cases of felony, two justices may order proper allowances to be made for their trouble, expenses, and loss of time in executing or endeavouring to execute such warrants; which order shall be submitted to the quarter sessions. And the Municipal Corporation Act contains provisions for the appointment and payment of special constables in boroughs.

By section 17 of the 3 & 4 Vict. c. 88, the Act to amend the Act for the Establishment of County and District Constables, justices of the county at quarter sessions, shall from time to time, subject to the approval of one of the secretaries of state, settle tables of fees and allowances for the service of summonses and execution of warrants, and for the performance of the other occasional duties which may be required of the local constables mentioned in the Act.

But by stat. 19 & 20 Vict. c. 69, s. 8, it shall not be lawful for any constable acting under the said Acts of the second and third and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, (other than a local constable appointed under the said Act of the third and fourth years of Her Majesty,) to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable; but this enactment shall not extend to prevent the receipt by any such constable of any fee or other payment legally payable which he may be liable to account for and pay over to the treasurer of the county or borough, or otherwise for the use of the county or borough, or which may be payable to, or applied in aid of, any police superannuation fund established or to be established in any borough, under the provisions of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, or of any local or other Act of parliament.

*Fees in relation to parish matters.*] By stat. 18 Geo. 3, c. 19, s. 4, after reciting that constables, headboroughs, and tithing-men, are, or may be, at great charge in "doing the business of their parish, township or place, and in many cases are not sufficiently indemnified by the laws," it is enacted, "that every constable, headborough, or tithing-man shall every three months, and within fourteen days after he shall go out of such office, deliver to the overseers of the poor of the said parish, township, or place, for the time being, a just account in writing fairly entered into a book to be kept for that purpose, and signed by him, of all sums so by him expended on account of the said parish, township, or place, in all cases not hitherto provided for by the laws heretofore made or by this Act; and also of all sums received by him on the account of the said parish, township, or place; and the said overseers of the poor, or their successors, shall, within the next fourteen days after the said account shall be delivered, lay the same before the inhabitants of the said parish, township, or place; and in case the said account be approved of by the majority



of such inhabitants, the overseers of the poor are to pay out of the poor rates made, or to be made for such parish, &c., such money as shall appear to be due on the said account; but in case the account, or any part thereof, shall be disallowed, then the overseers shall deliver back to the constable, headborough, or tithing-man, such book of accounts; and the constable, &c., may then produce the said book before any one or more justices of the peace in and for the county, &c., wherein such parish or township shall be situate, giving reasonable notice thereof to the overseers for the time being; which justice is to examine the same, and to hear and determine any objection that shall be made to the said accounts, and to settle the sum which to him shall appear due on the said account, and to enter the same in the said account, and to sign his name thereto; and the overseers to pay the said sum out of the money which shall come to their hands by virtue of any rate or assessment for the relief of the poor."

The 5th section provides, that the overseers if they feel aggrieved by the decision of the justice as to the accounts, &c., may appeal to the quarter sessions. The appeal does not lie, unless the majority of the overseers concur in it.

By section 9, the sessions may make rules as to any costs and charges to be allowed by virtue of the Act; such rules to be approved of and signed by a judge of assize.

The expenses of the constable, which are to be allowed him by the parish, are those necessarily incurred by him on behalf of his parish; and therefore, where an assault was committed on a constable, while in the execution of his duty, the court of King's Bench held, that the expenses of prosecuting such assault could not be paid by the overseers out of the poor's rate, and were not within the 4th section of the Act. And, in like manner, where a constable apprehended an offender for a misdemeanor committed in his presence, in a place of religious worship, and carried him before a magistrate, and was bound over by recognizances to prosecute him for the offence, it was decided that the expenses of such prosecution could not be charged in his accounts, under the statute, his duty being completely at an end when he carried the offender before a magistrate.

Fees paid by a constable (though one of the rural police) to a justice's clerk, for warrants, in the commitment of vagrants in a parish are monies expended by him on account of the parish, within the 18 Geo. 3, c. 19, s. 4, and payable out of the poor's rate (a).

By 7 Geo. 4, c. 64, s. 23, the court, before whom an indictment for an assault, &c. is tried, may allow the expenses of the prosecution, if the prosecutor appear on a recognizance, and the offence come under the class of offences named by that statute.

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(a) *Rex. v. The Inhabitants of Chelmsford*, 5 Q. B. 66. *R. v. Mayor, &c. of Gloucester*, Id. 862.



## SECTION II.

## THE APPREHENSION OF OFFENDERS.

- 
1. *Arrest without warrant*, p. 122.
  2. *Arrest under a warrant*, p. 138.
- 

1. *Arrest without warrant.*

*In what cases, generally*, 122. | *In the night*, 137.

*In what cases, generally.*] The following instructions have been promulgated for the guidance of constables, whether appointed under the County Constabulary Act, or under the Act 5 & 6 Vict. c. 109, for the appointing of parish constables:—

“The constable may arrest one whom he has just cause to suspect to be about to commit a felony. Thus when a drunken person, or a man in a violent passion, threatens the life of another, the constable should interfere and arrest.

“He should arrest any person having in his possession any pick-lock-key, crow-jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or out-building, or any person armed with any gun, pistol, hanger, cut-lass, bludgeon, or offensive weapon, or having upon him any instrument, with intent to commit any felonious act.

“Every person found in any dwelling-house, warehouse, coach-house, out-house, or stable, or in any inclosed yard, garden, or area, and being there for an unlawful purpose, may be arrested.

“In each of these cases the constable must judge from the situation and behaviour of the party what his intention is. In some cases no doubt can exist; as when the party is a notorious thief, or acting with those who are thieves, or when the party is seen to try people’s pockets in a crowd, or to attempt to break into a house, or to endeavour to take any property secretly from another. The constable will not act hastily, in case the intention is not clear, but content himself with watching closely the suspected party, that he may discover his design.

“The constable must arrest any one whom he sees in the act of committing a felony, or any one whom another positively charges with having committed a felony, or whom another suspects of having committed a felony, if the suspicion appear to the constable to be well founded, and provided the person so suspecting go with the constable.

“Though no charge be made, yet if the constable suspect a person to have committed a felony, he should arrest him; and if he have reasonable grounds for his suspicion, he will be justified, even though it should afterwards appear that no felony was in fact committed; but the constable must be cautious in thus acting upon his own suspicions.



“Generally, if the arrest was made discreetly and fairly in pursuit of an offender, and not from any private malice or ill-will, the constable need not doubt that the law will protect him.

“If, after sunset and before sunrising, the constable shall see any one carrying a bundle of goods which he suspects were stolen he should stop and examine the person, and detain him; but here also he should judge from circumstances (such as appearance and manner of the party, his account of himself, and the like) whether he has really got stolen goods, before he actually takes him into custody.

“The constable must make every exertion to effect the arrest; and the law gives him abundant power for the purpose. If the felon, or party accused of felony, fly, he may be immediately followed wherever he goes; and if he takes refuge in a house, the constable may break open the door, if necessary, to get in, first stating who he is, and his business; but the breaking open outer doors is so dangerous a proceeding, that the constable should never resort to it except in extreme cases, and when an immediate arrest is necessary.

“There are some cases in which a constable may and ought to break into a house, although no felony has been committed, when the necessity of the case will not admit of delay, as when persons are fighting furiously in a house, or when a house has been entered by others with a felonious intent, and a felony will probably be committed unless the constable interfere, and there are no other means of entering; except in such cases, it is better in general that the constable should wait till he has a warrant from a magistrate for the purpose.

“If a prisoner should escape, he may be retaken, and in immediate pursuit the constable may follow him into any place or any house.

“If a constable find his exertions insufficient to effect the arrest, he ought to require all persons present to assist him, and they are bound to do so.

“In cases of actual breaches of the peace, as riots, affrays, assaults, and the like, committed within the view of the constable, he should immediately interfere (first giving public notice of his office, if he be not already known), separate the combatants, and prevent others from joining in the affray. If the riot, &c., be of a serious nature, or if the offenders do not immediately desist, he should take them into custody, securing also the principal instigators of the tumult, and doing everything in his power to restore quiet.

“A constable in cases of assault which have not been committed in his presence, or within his view, is not authorized to arrest or assist in arresting the party charged, nor is he to receive a person so charged into his custody, unless the party has been arrested by some other constable who saw the assault committed. Where a man, in the presence of a county policeman, raised a shovel, as if to strike his wife, swearing that he would have murdered her were it not for the presence of the policeman: and afterwards for about twenty minutes he continued to use violent language towards his wife, and then left his house, professing an intention of going to his father's to sleep; after he had gone a few yards from the house, however, the policeman



arrested him; and the Court of Criminal Appeal held that he was justified in doing so. *R. v. Light*, 27 Law J. 1, m.

“He may arrest any one assaulting or opposing him in the execution of his duty.

“If a person forcibly enter the house of another, the constable may, at the request of the owner, turn him out directly; if he have entered peaceably, but having no right to enter, and the owner request the constable to turn him out, the constable should first request him to go out, and unless he do so, he should turn him out, in either case using no more force than is necessary for the purpose.

“When the offence has not yet been committed, but when a breach of the peace is likely to take place, as when persons are openly preparing to fight, the constables should take the parties concerned into custody; if they fly into a house, or are making preparations to fight within the house, the constable should enter the house to prevent them, and likewise take the parties into custody; and should the doors be closed, he may break them open if admission be refused, after giving notice of his office, and his object in entering.

“If a party threaten another with immediate personal violence, or offer to strike, the constable should interfere and prevent a breach of the peace; if one draw a weapon upon another attempting to strike, the constable should take him into custody. If persons be merely quarrelling or insulting each other by words, the constable has no right to take them into custody, but should be ready to prevent a breach of the peace.

“The constable ought to arrest and take before a justice any person walking about the streets, and exposing to view in the street any obscene print or exhibition.

“If a party charged with a misdemeanor escape out of custody, he may be pursued immediately anywhere; and if he take refuge in a house, the doors may be broken open after demand of admission, and after notification by the constable of his office and object in coming.

“The constable has power to apprehend and carry before a justice of the peace every common prostitute wandering in the public streets, public highways, or in any place of public resort, behaving in a riotous or indecent manner; every person wandering abroad, or placing himself or herself in any public street or highway, court or passage, to beg or gather alms, or causing or procuring or encouraging any child so to do, all such being declared by the law to be idle and disorderly persons; every person wandering abroad, or lodging in any barn or out-house, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself; every person wandering abroad and endeavouring, by the exposure of wounds or deformities, to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; every person playing or betting in any street, road, highway, or other open or



public place, at or with any table or instrument of gaming at any game or pretended game of chance."

In order to justify a constable in arresting upon the charge of felony, it is not necessary that the offence should have been committed, but there must be a reasonable charge, that is, there must be a rational statement from a person worthy some degree of credit.

If a constable see any person commit treason or felony, he may apprehend him (*a*). But where a constable was employed to guard a copse from which wood had been stolen, and for this purpose carried a loaded gun; from the copse, he saw a man coming out carrying wood, and he called to him to stop, but the man ran away, and the constable having no other way of bringing him to justice, fired, and wounded him in the leg; the man had in fact stolen the wood he was carrying, and had before been repeatedly convicted of the like offence, but the constable did not know it: it was holden that as the constable did not know that a felony had been committed, he was not justified in firing at the man (*b*).

So, a constable may apprehend any person whom he shall see actually engaged in any affray or other breach of the peace. Also, a constable may apprehend any person who encourages a prisoner in his custody to resist (*c*), or otherwise obstructs him in the execution of his duty (*d*). But where a constable was assaulted, and he went away for assistance, and returned with other constables in two hours, and attempted to apprehend the man who had assaulted him: it was holden that he had no right to do so; to apprehend for a misdemeanor without warrant, it must be done at the time the offence is committed, or on continued pursuit (*e*). And the constable must not take the offender into custody, unless he himself see the offender strike or attempt to strike. A case occurred at the Devon assizes, 1846, before Erle J. The case was one for assaulting George Peagum, who had been charged by Thomas Cole, a constable, to aid and assist him to apprehend the prisoner for an assault upon one Mary Rendle, and which assault the constable did not see committed. The learned judge addressing himself to Cole, the constable, said: Why did you take him into custody?—I was called to do so by Mary Rendle. The judge: But you saw him do nothing; he committed no assault or breach of the peace in your presence?—No, my lord. The judge: Then let me tell you, sir, that you were not authorized, and exceeded your duty when you took him into custody; and I say it now, not only for your instruction and information, but also of all others in your situation, that if a constable witness a breach of the peace or assault, if anything of this nature takes place in his presence, he is bound to take the parties into custody; but he is not warranted in doing so upon the mere representation of another. If anything unlawful has taken place, there are other methods then of dealing with it.

This, beyond doubt, is a true exposition of the law, but it is not

(*a*) 1 Hall, 587.

(*b*) *R. v. Dadson*, 20 Law J. 57, m.

(*c*) *White v. Edmunds, Peake*, 89.

(*d*) See *Levy v. Edwards*, 1 Car. & P.

40.

(*e*) *R. v. Walker*, 23 Law J. 123, m.



meant that a constable is not to take a person into custody who is about to strike in his presence ; he must not wait till the blow be given, but he may lay hold of any person to prevent his striking another, and if he will not desist, take him into custody. But after an assault is over with no intention on the part of the assailant to renew it, a constable is not justified in apprehending the perpetrator of it without a warrant from a justice. But at the same time the constable must bear in mind that if a dangerous wound be given, the case then assumes one of felony, for which apprehension may be always made without warrant. The reader is referred to J. P. No. 14, vol. x. p. 211, to see the case more fully.

In a case where the defendants broke and entered the plaintiff's house to prevent him from murdering his wife, the court of Common Pleas held that they were justified (*f*).

Any person may apprehend a thief in the mainour, that is, with stolen goods in his possession, or the like (*g*).

Any person may without warrant apprehend and carry before a justice a party about to expose an infant and leave it to perish, or a party playing with false dice (*h*).

No place affords protection to offenders against the criminal law, and they may be arrested anywhere, and whoever they may be (*i*).

A constable ought not to arrest a person on suspicion of having received stolen goods, on the mere assertion of one of the principal felons (*k*).

A constable should always be guided by the character of the prisoner, but it is often better in cases not requiring immediate apprehension, and when the offender can easily be found, to obtain a warrant, even though he might arrest without a warrant. For when a constable acts under a warrant he is entitled, as has been before noticed, to the protection afforded by statute.

A constable not known to be such, should on apprehending an offender, state himself to be a constable, or that he arrests in the name of the "Queen," or as the case may be, and for what cause.

Or if he show his proper staff of office it is sufficient (*l*).

A person may be apprehended in the night as well as in the day, and though the statute prohibits arrests on Sundays, a constable may apprehend in all cases of treason, felony, and breaches of the peace (*m*).

*Rawlins v. Ellis and others*, 10 J. P. 789, which case came before the court as a special case, on an order of Alderson B., embodying the following facts :—The defendant Ellis is an inspector of the metropolitan police force, and the two other defendants filled the same post in the city force. Some little time before the transaction which gave rise to this action, Lord Denman C, J., issued a bench warrant for the apprehension of the plaintiff, on a representation made to his

(*f*) Per Chambre J., *Handcock v. Baker and others*, 2 Bos. & Pull. 260.

(*g*) 1 Show. 24; Arch. J. P. vol. i. pp. 122, 125.

(*h*) Arch. J. P. vol. 1. pp. 122, 123.

(*i*) Id. p. 130.

(*k*) See *Isaacs v. Brand*, 2 Stark. R. 167.

(*l*) See Arch. J. P. tit. "Arrest," vol. i.

(*m*) 9 Co. Rep. 66; *Davis v. Russ*, 5 Bing. 354; 2 B. Moore, 590, S. C.



lordship by the clerk to the Central Criminal Court, to the effect that an indictment for a charge of conspiracy had been found against the plaintiff by the grand jury, and that he had not pleaded thereto. This warrant was placed in the hands of the defendant Ellis, by whom the plaintiff was arrested on Sunday, the 6th of April, in Shoreditch. This done, he was taken to two station-houses during Sunday, where he was detained in custody by the other defendants till the following morning, when he was taken before Rolfe B., at the judge's chambers in Rolls-gardens. That learned judge committed the plaintiff to Newgate to take his trial, and he there remained in prison twelve days, when he was tried and acquitted. Under these circumstances, the question for the opinion of the court was, whether it was lawful to arrest the plaintiff on a Sunday, the plaintiff contending that it was not lawful, and the defendants that it was. In addition to this, the defendants Adams and Sparey, contended that they could not be made liable as joint trespassers, with the defendant Ellis, and also that they had a good defence to the cause of action charged in the declaration under the statute relating to peace officers and constables. If the court should think that the arrest on Sunday was lawful, then the plaintiff agreed that judgment of *nolle prosequi* may be entered against him; but if the court should be of opinion that the arrest on Sunday was unlawful, then the defendants agreed that judgment by confession should be entered against them, or such of them as the court should think fit." *Per Curiam*.—The plaintiff has been lawfully arrested on a Sunday on this charge. Every indictable offence involves a breach of the peace. It would be impossible for the constables and officers entrusted with the execution of warrants to inquire and decide whether there has been a constructive breach of the peace only. On all misdemeanors the party indicted is liable to be arrested on criminal process on Sundays. There must be judgment of *nolle prosequi* entered accordingly for the defendants against the plaintiff.

If a felony be concealed, or if there be an attempt at such concealment, the offence is known by the name of misprision of felony, unless there be such circumstances in the case as will make the party accessory after the fact.

Thus, to observe the commission of a felony silently, without using any endeavours to apprehend the culprit, is misprision. So if the person robbed retake his goods, and then suffer the felon to depart, he will be guilty of misprision or concealment. The judgment is for this offence fine and imprisonment (*n*).

It is also a great misdemeanor to dissuade a witness from giving his evidence, although the dissuasion should not succeed. Upon such an occasion it was excepted that the indictment did not positively aver that there had been an indictment against any one, but the court overruled the objection, thinking it quite sufficient to say that the defendant knowing that such a person had been indicted, did such and such acts, and judgment of fine and imprisonment was given (*o*).

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(*n*) See Woolrych on Misdemeanors, p. 414.      (*o*) Id. p. 423.



It is also a serious misdemeanor, and punishable by information, to threaten a prosecutor, as by telling him he will be hanged; or the court will grant an attachment, &c.

If a reasonable charge of felony against a person be made to a constable, the constable will be justified in arresting him without warrant, although it afterwards turn out that the person was perfectly innocent, or that no felony had in fact been committed (*p*).

So on complaint to a constable that a man has threatened to kill another, the constable will be justified in arresting the party complained of and detaining him, until he can conveniently, without unnecessary delay, take him before a magistrate (*q*).

But it has been held that a constable is not justified in taking a person into custody for a mere assault, without warrant, unless he himself were present at the time the assault was committed (*r*).

A clergyman may on a criminal charge be arrested whilst in his church or chapel, and if a person have committed a felony in a foreign country and come into England, he may be arrested here and conveyed and given up to the magistrates of the country against the laws of which the offence was committed (*s*). See as to arrest abroad for a crime committed in this country, *R. v. Scott*, 9 B. & C. 446.

Mr. Chitty says, a constable may break open doors, to take a felon, if he be in the house, and entry be denied after demand, and notice given that he is a constable, or if any of his assistants be killed, after sufficient notice of his office, it is murder; and if the felon resist and cannot be taken, whether it be after or before the arrest, the killing of the felon, who cannot otherwise be taken, is not felony; because the law enjoins a constable to take a felon, and if he neglect his duty, he is indictable, and subject to fine and imprisonment. So where a felony has been committed, and there be reasonable ground to suspect a particular person to be the offender, a constable has a similar power of breaking open doors to apprehend him (*t*).

Doors also may be broken open by a constable where a felony has not been committed, but is likely or about to be so, in the house, in order to prevent its occurrence (*u*).

Mr. Chitty says, As to the case of breaking open doors, in order to apprehend offenders, it is to be observed that the law doth never allow of such extremities, but in cases of necessity, and therefore no one can justify breaking open another's door, to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance (*w*). No precise form of words is required in a case of this kind. It is sufficient that the party have notice that the officer come not as a mere trespasser, but claiming to act under a proper authority, provided that the officer

(*p*) *Samuel v. Payne*, Dougl. 359; *Cowles v. Dunbar*, 2 Car. & P. 565.

(*q*) 2 Hale, 88.

(*r*) See *Corper v. Henley*, 2 Esp. 540; 2 Hawk. c. 13, s. 8.

(*s*) Per Heath, J., 4 Taunt. 34.

(*t*) See 2 Hale, P. C. 91, 92.

(*u*) 2 Hale, P. C. 94, 95; 2 B. & P. 260; 1 R. & R. C. C. 93; 4 Bla. Com. 293, 294, Chitty's edit.

(*w*) 2 Hawk. c. 14, s. 1; 2 B. & Ald. 592.



has a legal warrant (*x*). In all cases doors may be broken open (if the offender cannot otherwise be taken under the warrant) for treason, felony, suspicion of felony, or actual breach of the peace; or to search for stolen goods, or it should seem whenever the offence is of a public nature (*y*).

When once the constable has entered the house, he may, without demanding admittance, break open any inner door that obstructs his progress, and if he be killed it will be murder (*z*); and if the constable, after obtaining admittance, be locked or fastened in, he may lawfully break out by any means in his power (*a*).

A constable having a reasonable suspicion that a man has committed a felony, may apprehend him (*b*). So may a private individual. The difference between the authority of the constable, and the private person in this respect is, that the latter is justified only in case it turn out that a felony was in fact committed; but the constable may justify the arrest and detention whether in fact a felony were committed or not,

The ordinary grounds of justifiable suspicion are thus enumerated by Hawkins: 1st, The common fame of the country; 2nd, Living a vagrant, idle, disorderly, life without any visible means to support it; 3rd, Being in company with known offenders, at the time the offence was committed, or at other times; 4th, Being found under circumstances inducing a strong presumption of guilt; as for instance, having stolen goods in his possession, and not being able to account as having come by them honestly, or the like; 5th, Behaving in such a manner as to betray a consciousness of guilt, as by making no answer, when charged with the offence, or absconding, and the like (*c*).

Any person found committing an offence punishable either by indictment or upon summary conviction, by statute 7 & 8 Geo. 4, c. 29, the Larceny Act, or statute 7 & 8 Geo. 4, c. 30, the Malicious Injuries Acts, except the offence of angling in the day-time, may immediately be apprehended without warrant, by any peace officer, or the owner of the property with respect to which the offence was committed, or by his servant, or by any person authorized by him, and forthwith taken before some neighbouring magistrate (*d*), but caution should be used in those cases; the offender must be either taken in the very act of committing the offence, or on a quick pursuit (*e*). An Act of parliament having passed to authorize a railway company to enter upon certain land, A, was employed by the company to enter thereon, before the conditions of the Act were complied with, of which fact A. was ignorant. The owner of the land apprehended A. under the Malicious Trespass Act, 7 & 8 Geo. 4, c. 30, s. 24, and

(*x*) See Fort. 137.

(*y*) See 14 East, 116; Fort. 320; 1 Hale, P. C. 583; 2 Hawk. c. 14, s. 7; P. C. 322; 2 Hale, P. C. 117; Dalt. c. 169. 151.

(*z*) See 1 Hale, P. C. 458, 459; 4 Taunt. 619.

(*a*) 2 Hawk. c. 14, s. 11.

(*b*) See *Ledwith v. Catchpole*, Cald 291; *Lawrence v. Hedger*, 3 Taunt. 14.

(*c*) See 2 Hawk. c. 12, ss. 9—14.

(*d*) 7 & 8 Geo. 4, c. 29, s. 63, and 7 & 8 Geo. 4, c. 30, s. 23.

(*e*) See *Hanway v. Boulton*, 4 Car. & P. 350; *R. v. Curran*, 3 Car. & P. 397.



caused him to be fined before a magistrate. The jury having found that the apprehension of A. was under a *bonâ fide* and reasonable belief that he was an offender under the Acts: *Held*, that notwithstanding that, the owner was liable in an action of trespass at the suit of A., because he had not in fact committed an offence under the Act (*f*). So by the Vagrant Act, 5 Geo. 4, c. 83, s. 6, any person may apprehend a party found offending against this Act, and take him before a justice, or deliver him to a constable. In this case, also, the party must be taken, either in the act of committing the offence or on a fresh pursuit (*g*).

An arrest without warrant may be made at any time, even on a Sunday.

In *Wright v. Court*, 4 B. & C. 596. the court of King's Bench held that a constable arresting a man on suspicion of felony, was bound to take him before a magistrate to be examined as soon as he reasonably could, and that he could not justify his detention for three days, in order to give the party whose goods had been stolen an opportunity of collecting his witnesses, and bringing them to prove the felony. And in the same case, the court seemed to be of opinion that a constable could not justify handcuffing a prisoner, unless he had attempted to escape, or unless it were necessary in order to prevent his doing so. (These latter words admit of a very liberal construction, and therefore invest a discretionary power in the officer). The words admit of a very liberal construction, it is true; but constables will do well on all occasions, and more especially when they have to exercise a discretionary power, to ask themselves whether the liberal construction will be adopted. They may take it for granted in all cases that the smallest possible amount of actual violence necessary for accomplishing the object for which violence is used is the largest amount which the law sanctions; and that a case of absolute necessity must be strictly made out to justify that violence which is a degradation to the object of it. The writer also begs leave to add here, that handcuffing a prisoner is an act of humanity; it prevents a prisoner from attempting to escape, which, if he were loose and unfettered, he might be tempted to do, and not only run the risk of having a broken head, but very much increase the suspicion of his guilt.

A constable cannot arrest without a magistrate's warrant in misdemeanors not committed in his view, although there be a positive charge (*h*). As in the case of fraud, &c. (*i*); or in the case of a person disturbing a congregation during divine service, in which instance the disturber can only be removed from the church or chapel, and not detained afterwards (*k*).

By statute in certain cases of misdemeanor, an arrest without warrant is expressly rendered lawful.

A constable should be most particular when apprehending a person

(*f*) *Harrington v. Moore*, 12 J. P. 629; 17 L. J. m. 117.

(*g*) See *R. v. Howarth*, 1 R. & M. C. C. 207.

(*h*) See 1 Arch. Justice tit. "Constable," "Arrest."

(*i*) See *Fox v. Gaunt*, 3 B. & Ad. 798.

(*k*) See *Williams v. Glennister*, 2 B. & C. 699.



charged with felony in a case of death or wounding, to minutely examine the prisoner's hands, clothes, knife, &c., and to inspect the place where it is said to have been committed, taking care to measure and mark all particulars, and such as to show the mode of entry into the house, &c., which is very often of the utmost importance; if a print from a shoe be left, take care it do not get defaced, cover it up, and place a watch to prevent its being disturbed; should the boot or shoe be obtained from any party suspected, take care the same be not placed in the print already left, but by the side thereof, the measure very carefully by compasses, &c. Should a party injured appear to be dangerously wounded or otherwise, a declaration should be made before persons of respectability, if in the absence of a justice, and signed by such wounded person in the presence of a witness or witnesses, and no time should be lost in apprehending the party charged.

Where a person by knocking loudly at the door of a dwelling-house in the night time, very much annoyed and disturbed the persons residing in it, he was requested to go away, and he refuses to do so, but upon one of the inmates calling for the police, he ran off; upon the policeman coming up he and the person who called him pursued the person who had been knocking, and took him in an adjoining street; the court held that they were not authorized by law to do so, but if they had taken him in the act, or under circumstances showing his intention to renew the annoyance, they might legally have apprehended him (*d*). In a recent case it was decided, that if there be any affray, a person who witnesses it may, on the spot where it was committed, and while there is danger that it will be continued or renewed, deliver the affrayer in charge to a constable or police officer; and consequently that the latter may, although he did not witness the original affray, legally arrest the party so given in charge in such case (*e*).

In a case lately decided (*f*), which was an action for an assault and imprisonment, wherein the defendant justified on the ground that the plaintiff was making a disturbance in the defendant's public-house, Mr. Baron Parke in summing up observed, "In order to make out this defence and to substantiate the special pleas, you must be satisfied that the complainant had committed a breach of the peace, and that the watchman saw him do so. If a man comes into a public-house, and conducts himself in a disorderly manner, and the landlord requests him to go out and he will not, the landlord may turn him out. There is no doubt but a landlord may turn out a person who is making a disturbance in a public-house, though such disturbance does not amount to a breach of the peace. To do this the landlord may lay hands on him, and in so doing the landlord is not guilty of any breach of the peace. But if the person resists and lays hands on the landlord, that is an unjustifiable assault upon the landlord, and if the watchman, in this case, saw such an assault committed, that would make out the pleas. There might, it

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(*d*) *Baynes v. Brewster*, 11 L. J. 5.  
m.; 1 G. & Dav. 669.

(*e*) See *Timothy v. Simpson*, 1 C.  
M. & R. 762.

(*f*) *Howell v. Jackson*, 6 Car. & P. 723.



is true, be a sufficient breach of the peace to justify the defendant as the landlord of the house, giving the plaintiff into custody without this assault, &c. even if there was no assault at all. For if the plaintiff made such a noise and disturbance as would create alarm and disquiet the neighbourhood and the persons passing along the adjacent streets, that would be such a breach of the peace as would not only authorize the landlord to turn him out of the house, but it would also give the landlord a right to have the plaintiff taken into custody, if this occurred in the view of the watchman. The watchman, Ward, has said he saw the piece of work, and what he calls bonneting, the first time he went into the house. Now if the plaintiff and others were then conducting themselves in a manner calculated to disturb the neighbourhood, this would justify the watchman in turning the plaintiff out, and in taking him into custody, if on his going to the house the second time he found the plaintiff still there. You will first consider whether the defendant had hold of the plaintiff endeavouring to put him out, and whether the plaintiff laid hands on the defendant to resist that; for if it were so, and the watchman saw it, that would make out the justification. But should you think that that is not made out, are you satisfied that there was on the first occasion such a disturbance, in which the plaintiff took part, as was calculated to disturb the neighbourhood, and that the watchman then saw it? as that would justify the watchman in taking the plaintiff into custody, when he found him in the public-house on the second occasion, and *à fortiori*, that would be so if the watchman saw the plaintiff still joining in such disturbance as would amount to a breach of the peace; I mean on the second occasion, when the plaintiff was taken into custody."

In *Rex v. Henns*, 7 Car. & P. 312, the prisoner was indicted for maliciously cutting a policeman, with intent to murder him, or do him bodily harm, &c. It appeared that about twenty minutes to twelve o'clock at night the prosecutor was called into a beer-house, and desired to clear the house, which he did. He then went into the street, and there the prisoner and many others were standing near the door, when the prisoner refused to go home, and used very abusive and violent language. The prosecutor laid his hand upon his shoulder gently, and told him to go away, on which the prisoner immediately stabbed him in the throat with a knife. The defence attempted was, that the prosecutor had previously struck the prisoner.

Mr. Justice Williams (to the jury): "If a policeman is called upon to send guests from a public-house, who may be disorderly or unwilling to go, if he does send them away, he is doing nothing but what is within the line of his duty, and what is perfectly necessary for the preservation of order. Twenty minutes to twelve o'clock at night is a time at which it is convenient and right that a public-house should be cleared; consequently if a policeman had heard any noise there, he would have acted within the line of his duty if he had gone in and insisted that the house should be cleared; and much more so if he was required by the landlord or landlady; and after that was done, if a lot of people remained in the street, and the crowd increased in consequence of their attention being drawn to the clearing of the house, and if anything was saying or doing likely



to lead to a breach of the peace, the policeman was not only bound to interfere, but it would have been a breach of his duty if he had not done so. One great use of these police constables is, to prevent mischief in the bud, and to interfere as early as possible before it breaks out; and if, in so doing, he ordered the people to go away, and any one was unwilling, and defied the policeman, and used threatening language, the policeman was perfectly justified in insisting upon that person going off; and if he had warned him several times, and he would not go away, and used threatening language if any one ventured to touch him, the policeman was entirely justified in using a degree of violence to push him from the place, in order to get him home; and therefore anything that he did would not be in the nature of an assault, but would be an act in the discharge of his duty, and therefore any blow that was given afterwards by a cutting instrument would be precisely the same as if it had been given without anything done by a policeman." Verdict, *Guilty*.

In a case (*a*) for an assault on a constable in the execution of his duty, it appeared that one of the defendants kept a public-house, and that at half-past eleven o'clock at night, a night-constable heard a disturbance in the house, and that again he heard a disturbance at half-past one, and that the inspector of police being informed of it, went to the house, and finding the door ajar, entered. Smith asked him what he wanted, and he said he was inspector of police, and desired the defendant to shut up his house, which he refused to do, and said he would throw the officer out of the house. The assault was then committed. Tindal, C. J.: "It has been stated that the inspector of police was not justified in entering the public-house, but I think that is not the law, and I think that he was justified under the circumstances, and that his entering the house was no trespass, as he found the door open; this is not like the case of a private house. It being a public-house he had a right to enter." A constable is not only empowered, as all private persons are, to part an affray in his presence, but is also bound at his peril to use his best endeavours to this purpose; and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable by fine and imprisonment (*b*). A constable, in the first instance, should use his endeavours to suppress the affray by mild means and by persuasion. He should also declare aloud that he is a peace officer, and will prevent a breach of the peace. But this is not in law essential, especially if there be not time or opportunity for explanation, or the party knows the cause of interference, otherwise it is prudent to do so if possible (*c*).

And if a constable see persons either actually engaged in an affray, as by striking or offering to strike, or drawing their weapons, or the like, or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice, to find sureties for the peace, or he may imprison him of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find such surety by obligation.

(*a*) *Rex v. Smith and others*,  
6 Car. & P. 136.

(*b*) See 1 Hawk. c. 63, s. 13.

(*c*) See 2 Hawk. c. 12, s. 19.



But it seems that he has no power to imprison such an offender in any other manner, or for any other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence. A constable ought not to lay hands on those who barely contend with hot words, without any threat of personal hurt; and all which he can do in such a case is to command them under pain of imprisonment, to avoid fighting (*d*).

The 7 & 8 Geo. 4, c. 29, s. 63, provides that any person *found committing* any of the offences punishable under that Act, except only the offence of angling in the day time, may be immediately arrested without a warrant, by any peace officer or by the owner of the property on or with respect to which the offence shall be committed, or by his servant or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law. They are as follows:—Stealing securities for money or warrants for goods; robbing or stealing from the person; assaulting with intent to rob; demanding property with menaces or force; obtaining property by threatening to accuse of an infamous crime; sending letters containing menacing demands; or threatening to accuse of an infamous crime, to extort money; sacrilege; burglary; housebreaking and stealing in a house; robbing in a building in the same curtilage with, but not part of the house; robbery in a shop, warehouse, &c.; in a port, river, or canal, &c.; plundering a vessel, wrecked, stranded, &c.; being in possession of shipwrecked goods, without showing a lawful possession thereof; stealing records and other proceedings of a court of law or equity; stealing or concealing, &c. wills; stealing writings relating to real property; stealing horses, cows, or sheep; stealing deer; being found upon search-warrant in possession of a part of a stolen deer, or the skin, &c.; setting engines for taking deer, or pulling down park fences; resisting the keepers of deer in the execution of their duty; killing hares or conies in a warren or place where they are usually kept; stealing dogs or domestic birds or beasts, not the subject of larceny at common law; being in possession of such or their skins, plumage, &c.; unlawfully killing pigeons; unlawfully taking fish in private property, in the night time or day, except by angling; stealing or dredging for oysters or their brood in a private bed; stealing ore or produce of any mine; stealing or destroying trees, shrubs, &c.; stealing or destroying live or dead fence, stile, or gate, or being in possession of such when stolen; stealing fruit or cultivated vegetables; stealing glass, woodwork, or fixtures of any kind from a building, or metal, fixtures from grounds; stealing by tenants or lodgers of any property let to them with their houses or apartments; stealing by clerks or servants of their master's property; embezzlement by agents of money, goods, or valuable securities intrusted to them for safe custody or any specific purpose; pledging by factors for their own purposes, of goods or documents relating to goods intrusted to them for sale for more than the amount of their lien upon them; obtaining money on false pretences; receiving stolen property knowing it to be stolen; taking a reward for helping to the

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(*d*) See 1 Hawk. c. 63, s. 15.



recovery of stolen property, without bringing the offender to justice; advertising a reward for the return of stolen property with impunity to the offender; being accessory to a felony or abetting a misdemeanor, or abetting an offence named in the Act.

In the case of *Handcock v. Baker*, 2 B. & P. 260, a person of decent repute, whilst attending a fair at a town in which he was a stranger, in the way of his business as a horsedealer, had unknowingly uttered a forged note, and was afterwards apprehended by private persons, without a warrant, on his way home, and taken before a magistrate for examination, by whom he was immediately discharged: it was held that he could not maintain an action against those who apprehend him, such circumstances affording a reasonable ground of suspicion against him.

As has been before stated, a constable not known to be such, should, on apprehending an offender, state that he is a peace officer, or that he arrests in the Queen's name, and for what cause, or without this he should show his staff of office. If the constable lay his hand on the shoulder of an offender and state as above, that is a valid arrest: or if he gently touch him, saying he is his prisoner. Should the party charged be in the room of a house, it will be sufficient to establish a valid arrest by locking the door and telling the party he is arrested. Violence need not be used, but some restraint is necessary—mere words will not constitute an arrest. If an innocent person be indicted for felony, where in truth no felony had been committed, and will not suffer himself to be taken by the officer who has a warrant for his apprehension, he may lawfully be killed by him if he cannot otherwise be taken; for there is a charge against him upon record, to which at his peril he is bound to answer; but caution should be used that he is a lawful officer, and there must be a lawful warrant, and the person charged should be told there is a warrant against him. So if, after arrest, the officer be assaulted by such prisoner, to the intent to obtain his escape, and the officer standing upon his guard kill him, this is not felony by the officer, for he is not bound to go back to the wall. But where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told why, and the arrest will be legal, and the resistance illegal, as much as if he had been told (a).

A notorious cheat, *ex. gr.* one having false dice and actually caught playing with them, may be apprehended by either constable or private person, in order to take him before a magistrate (b).

Where a man and his wife refused to go out of the shop of a baker and continued to abuse him in relation to an alleged overcharge, until a crowd of persons to the number of 100 and more collected round his door, and obstructed the public passage: it was held that the baker was justified in giving the man and his wife into custody, and that their conduct amounted to a breach of the peace (c).

An affray is the fighting of two or more persons in some public place, to the terror of the Queen's subjects: for if the fighting be

(a) *R. v. Howarth* R. & M., C. C. 207.  
(b) *Jones*, 249; Cro. Car. 274.

(c) *Cohen v. Huskisson*, 2 M. & W. 477; *Ingle v. Bell*, 1 M. & W. 516.



in private, it is not an affray, but an assault (*d*). It differs from a riot in not being premeditated: two persons may be guilty of an affray, but it requires three or more to constitute a riot—mere quarrelsome words will not make an affray (*e*).

To support a prosecution for an affray, it must be proved: 1st, The fighting; 2nd, That it was a public place; 3rd, That it was to the terror of the Queen's subjects; 4th, That two or more persons were engaged in it.

In the case of *Timothy v. Simpson*, Parke, B., said, It is clear that *any* person present may arrest the affrayer, at the moment of the affray, and detain him till his passion has cooled, and his desire to break the peace has ceased, and then deliver him to a peace officer. And if that be so, what reason can there be why he may not arrest an affrayer after the actual violence is over, but whilst he shows a disposition to renew it by persisting in remaining on the spot where he has committed it? Both cases fall within the same principle, which is, that for the sake of the preservation of the peace, any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is likely to be endangered by his acts. In truth, whilst those are assembled together who have committed acts of violence and the danger of their renewal continues, the affray itself may be said to continue; and *during the affray* the constable may not merely on his own view, but on *the information* and complaint of another, arrest the offender, and of course the person so complaining is justified in giving the charge to the constable (*f*).

Before a private person interferes to prevent a breach of the peace, as an affray, he is bound to notify his intention of so doing, otherwise the party engaged in the affray may imagine that he comes to act as a party (*g*). Lord Tenterden remarked, in the case of *Fox v. Gaunt*, 3 B. & A. 798, that it was much better for a private person in misdemeanors to apply to a magistrate for a warrant, than take the law into their own hands, which they were apt to do.

Another and important caution to an officer is to pay particular attention to parties charged with felony, that they do not drop, destroy, or otherwise hide or secrete the property or any part of it, on their way to the station; they will, some of them,—and particularly old hands that have been before the magistrates times innumerable, and well know, unless the property be found upon them, they must be discharged,—swallow sovereigns with the greatest of ease. Others having previously concerted with their associates, should either of them be taken in “prigging” (thieving), come up by the side of the policeman, and if a female, affect crying, inquire the cause of the apprehension; then the prisoner will quickly turn round, as far as the officer's grasp will allow, abuse him and tell him he is pulling her arm off; the associate will persuade her to go quietly; the officer is in no fault, poor man! he must do his duty. By this time, if a *purse*, “it is all made right,” she has taken the

(*d*) 4 Bla. Com. 145.

(*e*) Id. 146; Roscoe's Digest, 243.

(*f*) 1 C.M. & B. 762; 1 Arch. J.P. 122.

(*g*) 1 East's P. C. 306, Fost. 310;  
4 Arch. J. P. 194.



advice of, very probably, her sister, goes very quiet, well knowing no charge can be supported against her; others will hide notes in their hair and various other places.

Also if, on searching a lodging house, &c., you should come in contact with a box or other article which is locked, be very careful in fully ascertaining the true owner of it: if it belong to a lodger who is absent, cause him to be searched immediately on his apprehension, for should the stolen property be found in the box, &c., and he learn such to be the fact, perhaps he would destroy the key and disown the property, and the keeper of such house would no doubt turn round, by stating he did not know to whom the box, &c. belonged, and that he took little notice of those matters.

In the rural districts robberies are committed upon the farmers in various ways. A person who keeps a cow or two, and has little or no land to support them, makes the most of what he has got by sowing two or three different sorts of turnips upon it, and afterwards selecting any of his neighbour's turnips corresponding with his own; so that when he had stolen them, if found, they correspond with his own, and of course are of his own production. It is calculated that out of the whole population of London and the suburbs, about forty thousand persons subsist by thieving.

As I have previously stated, an officer must be guided in his duty by circumstances: do not be harsh, but be just. I would sooner that ten guilty persons should escape than one innocent person should be punished. A police officer is not unfrequently considered officious, and hastily condemned by the public as guilty of overstepping his duty, although he may not have acted up to it. This is not all. Some designing miscreant invents and propagates a palpable falsehood, injurious to the character of the officer, which soon spreads through the country: some believe it, others dispute it, and perhaps the poor innocent fellow never hears of it at all, and therefore has no chance to defend himself. Or, perhaps, the falsehood has been repeated so often that it cannot be traced to the real calumniator. A public officer rarely escapes from giving offence to some influential person or other by doing nothing more than his duty; very few indeed are repaid with that appreciation so justly their due. Perhaps the officer has, at an enormous risk and private expense, coupled with most extraordinary and unceasing exertions, broken up gangs of poachers, detected and convicted all the principal thieves, and driven the others out of the county; but no sooner is all this accomplished than some officious person starts up—"The officer has nothing to do:" and, perhaps, adds "his salary ought to be reduced," forgetting their former state; and every act he commits is construed to his prejudice. I do not wish this to be understood to apply to all, or individually to any; but such I have, however, known to be the case.

*In the night.*] By stat 14 & 15 Vict. c. 19, s. 1, if any person shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling house or other building whatsoever and to commit any felony therein, or if any person shall be found by night having in



his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking, or if any person shall be found by night having his face blackened or otherwise disguised, with intent to commit any felony, or if any person shall be found by night in any dwelling house or other building whatsoever with intent to commit any felony therein, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned, with or without hard labour, for any term not exceeding three years.

## 2. *Arrest under Warrant.*

The constable is the proper subordinate officer to the justice of the peace and must execute his warrant. When a statute authorizes a justice to convict an offender, and levy the penalty by warrant of distress, without saying to whom it shall be directed, or by whom executed, the constable is the proper officer to serve such warrant, and liable to be indicted if he refuses; and by stat. 33 Geo. 3, c. 55, s. 1, a constable is liable to a penalty of forty shillings for neglect or disobedience of a justice's warrant or order.

As a warrant, in ordinary cases, is not returnable at any particular time, no time is in fact limited, for making the arrest under it: but it should be executed without any unnecessary delay.

Where a warrant required a constable to arrest the party, to the end that he might become bound to appear at the next sessions, &c., this was holden to mean the next sessions after the arrest, and not merely the next sessions, after granting the warrant, and that therefore the arrest after the latter sessions was good (*a*).

As has been before noticed, an arrest cannot be made under a warrant on a Sunday, "except in cases of treason, felony, or breach of the peace;" but a very liberal construction is put upon these latter words, and, therefore, it has been holden that a warrant to apprehend a man that he might find sureties for his good behaviour was not within the Act, but rather that it was within the exception, and that therefore the party might be taken on a Sunday (*b*). The arrest, with or without warrant, may be made in the night-time as well as in the day (*c*). An arrest without a warrant may be made in any county, but the officer must bear in mind the offender should be taken forthwith before a magistrate, that is, as soon as circumstances will conveniently permit (*d*).

An arrest under a warrant may be made anywhere within the jurisdiction of the justice granting the warrant; and by statute 24 Geo. 2, c. 55, s. 1, if any person against whom a warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction of the justice granting the warrant either before or after

(*a*) See *Mayhew v. Parker*, 8 T.R. 110.

(*b*) See *Johnson v. Coulton*, T. Raym.

(*c*) 9 Co. Rep. 6.

(*d*) 2 Hale, P. C. 95, 96.



the issuing thereof, any justice for the county or place where such person shall so escape or be, upon proof on oath of the handwriting of the justice granting such warrant, shall indorse his name thereon: which shall be sufficient authority to the person bringing such warrant. The magistrate cannot exercise a discretion in this matter, but he must back the warrant, if oath be duly made of the handwriting of the justice who granted it (*e*). The officer will here observe that he must be prepared to prove the signature of the magistrate granting the warrant.

The defendant, a constable, justified the assault and imprisonment of the plaintiff under a magistrate's warrant, which erroneously stated that the plaintiff was there present to hear the complaint against him, although he was in another county; while on the indorsement of it for execution, by a magistrate of the county where the plaintiff was, it did not appear that the handwriting of the committing magistrate had been proved according to 24 Geo. 2, c. 55, s. 1: held that if these objections to the warrant were tenable, they showed "defect in the jurisdiction of the magistrate, and did not deprive the constable of the protection given by the warrant under 24 Geo. 2, c. 44, s. 6."

In trespass against a constable for taking the plaintiff on a charge of felony, under a warrant which described him by a wrong Christian name: held that the warrant afforded no protection to the defendant, although the plaintiff was the person really intended to be taken, and consequently that the plaintiff was entitled to recover without having demanded a perusal and copy of the warrant under 24 Geo. 2, c. 44, s. 6 (*f*).

It may be observed here, that by some statutes, to wit, the 7 & 8 Geo. 4, c. 29, s. 73, the "Larceny Act;" the 7 & 8 Geo. 4, c. 30, s. 39, the "Malicious Injuries Act;" 9 Geo. 4, c. 31, "Offences against the Person;" and 1 & 2 Will. 4, c. 32, s. 45, the "Game Act;" it is provided that no warrant of commitment on a conviction under those statutes shall be held to be void, by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there is good and valid conviction to sustain such commitment (*g*).

A warrant is a complete justification to the person to whom it is directed, acting *bonâ fide* under it, even though the party charged should prove his innocence (*h*). And if in the attempt to execute a lawful warrant by breaking into the house of a felon, after previous demand of admittance, the constable be killed by the party attempting to resist, it will be murder in all concerned; and if on the other hand he unavoidably kill any of the parties opposing him, the homicide will be justifiable in furtherance of justice (*i*).

Upon a warrant from a justice of the peace to compel a man to find sureties for his good behaviour, doors may be forced if necessary (*k*).

(*e*) See *R. v. Kynaston*, 1 East, 171.

(*f*) *Hoye v. Bushe*, 2 Scott N. R. 86.  
But see *Gosden v. Elphick*, 19 L.J., ex. 9.

(*g*) See stat. 11 & 12 Vict. c. 42, s. 8;  
11 & 12 Vict. c. 43, s. 3.

(*h*) See 24 Geo. 2, c. 44; 2 Hawk.  
c. 13, s. 11.

(*i*) See 1 Hale, P. C. 494; Fort. 270.

(*k*) 2 Hawk. c. 14, s. 3.



So a constable having a warrant to levy the money adjudged by a justice to be levied, by virtue of an Act of Parliament, which authorizes him to convict in a penalty, to a part of which the Queen is entitled, may break open doors to effect his purpose, though he is compelled first to show his warrant, *if demanded* (l). After a party has been once actually arrested and escapes from custody, any door may be broken open to retake him, after proper demand of admittance (m).

And the house of a third person, if the offender fly to it for refuge, is not privileged; though it is said to be at the peril of the constable that the party be there (n). Also upon search warrants regularly granted, and specially directed, it seems to be settled, that after the proper precautions the doors of the house to be searched may be broken open; and in like manner boxes, after the keys have been demanded, or without such demand (o); and whether the property is found there or not, the officer will be excused (p).

In the case of *Lannock v. Brown*, 2 B. & A. 592, Abbot, C. J., observed, "It is not at present necessary for us to decide how far in the case of a person charged with felony, it would be necessary to make a previous demand of admittance before you could justify breaking open the outer door of his house, because I am clearly of opinion that, in the case of a misdemeanor, such previous demand is requisite; and that is sufficient for the determination of the present case."

It is reasonable that the law should be so; for if no previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost.

Where persons against whom a warrant is issued in any of the colonies, for treason or felony committed there, escape into any part of the United Kingdom, he may be arrested and sent back upon the warrant being backed by a secretary of state (q).

The stat. 6 & 7 Vict. c. 75, s. 1, empowers justices of the peace, requisition having been duly made by the ambassador, or other accredited diplomatic agent of the king of the French, and such requisition having been signified by warrant under the hand and seal of the secretary of state, on being required by the secretary of state, to issue a warrant for the apprehension of any person accused of having committed in the French dominions, after the ratification of a certain convention therein referred to, any one of certain crimes therein described; and "to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid." The return to a writ of *habeas corpus*, set forth a warrant of committal under this statute, which directed the person committed to be kept in custody "until he shall be discharged by due course of

(l) 2 Hawk. c. 14, s. 3.

(m) See 2 Hawk. c. 14, s. 9.

(n) See 2 Hale, P. C. 117.

(o) See 4 Taunt. 625.

(p) 2 Hale, P. C. 151; 2 Wils. 284.

(q) 6 & 7 Vict. c. 34; 16 & 17 Vict. c. 118.



law." *Held*, bad; for the Act gives a special authority, which must be strictly pursued (*r*). The power of the court to deal with offenders within the statute, being derived from the statute solely, and the warrant of committal being defective, the court refused to remand the prisoner to custody, on the suggestion that the depositions contained the statement of an offence. The court can only remand under such circumstances when the prisoner can be tried in this country and not elsewhere (*r*).

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### SECTION III.

#### JUSTICES OF THE PEACE AND THEIR JURISDICTION.

*Stat. 21 & 22 Vict. c. 73.—An Act to Amend the Law concerning the Powers of Stipendiary Magistrates and Justices of the Peace in certain Cases.*

1. *Authority of stipendiary magistrates.*] Every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district, sitting at a police court or other place appointed in that behalf, shall have power to do alone any act, and to exercise alone any jurisdiction, which under any law now in force, or under any law not containing an express enactment to the contrary hereafter to be made, may be done or exercised by two justices of the peace, and all the provisions of any Act of parliament auxiliary to the jurisdiction of such justices shall be applicable also to the jurisdiction of such stipendiary magistrate.

2. *The like as to acts required to be done in petty sessions.*] The authority and jurisdiction given to a stipendiary magistrate by the enactment hereinbefore contained shall extend and apply as well to the cases where the act or jurisdiction is or hereafter may be expressly required to be done or exercised by justices sitting or acting in petty sessions as to other cases, and any enactment authorizing or requiring persons to be summoned or to appear at such petty sessions shall in the like cases authorize or require persons to be summoned or to appear before the stipendiary magistrate having jurisdiction at the police court or other place appointed for his sitting.

3. *But not as to quarter sessions or special sessions.*] Nothing hereinbefore contained shall extend to acts to be done or jurisdiction to be exercised at the general or quarter sessions of the peace, or to acts or jurisdiction expressly required (by any existing or future law) to be done or exercised at special sessions, or to any act or jurisdiction in relation to the grant or transfer of any licence.

4. *And saving as to the metropolitan police magistrates.*] Nothing hereinbefore contained shall extend, alter, or affect in any manner the

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(*r*) *In re Besset*, 8 J. P. 743.



powers or authorities of the magistrates appointed or to be appointed to the police courts in the metropolitan police district.

6. *As to the metropolitan district.*] So much of stat. 2 & 3 Vict. c. 71, s. 18, as makes void (except in the cases therein excepted) "every summons or warrant issued by any justice of the peace of the counties of Middlesex, Surrey, Kent, Essex, or Hertfordshire respectively, requiring any person residing within the metropolitan police district to appear at any place without the said district to answer any information or complaint touching any matter arising within the said district," shall not apply to any such summons or warrant in respect of any matter arising within any part of the said district not assigned for the time being to any of the police courts of the metropolis.

7. In every case in which any person shall be brought before any police magistrate, or any two magistrates acting within the said metropolitan police district, for any place within which no police court shall have been established, for any offence under stat. 2 & 3 Vict. c. 71, s. 24, such police magistrate, or such magistrates acting in and for such place, may hear and determine the matter, and in case of conviction may commit the offender to be imprisoned in any gaol or house of correction in and for the county, liberty or place in which such offence shall have been committed, though not within the said metropolitan police district, and with or without hard labour for any time not exceeding two calendar months, and in their discretion without the infliction of any fine in default of payment of which such imprisonment might be adjudged.

13. *Stipendiary magistrate may appoint a deputy.*] It shall be lawful for any stipendiary magistrate, with the approval of the secretary of state for the home department, to appoint a deputy, who shall have practised as a barrister-at-law for at least seven years, to act for him for any time or times not exceeding six weeks in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and perform all the duties of the stipendiary magistrate for whom he shall have been so appointed.

14. *Stipendiary magistrates may be appointed to the metropolitan police courts.*] It shall be lawful for Her Majesty to appoint any stipendiary magistrate acting for any city, town, liberty, borough, or place in England or Wales to be a magistrate of any one of the police courts of the metropolitan police district, although such stipendiary magistrate shall not have practised as a barrister during at least seven years then last past, nor shall have practised as a barrister for four years then last past having previously practised as a certificated special pleader for three years below the bar.



## SECTION IV.

## COMMITMENT FOR INDICTABLE OFFENCES.

*Stat. 11 & 12 Vict. c. 42,—An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to persons charged with Indictable Offences.*

Sect. 1. *For what offences a justice of the peace may grant a warrant or summons to cause a person charged therewith to be brought before him.—In what cases the party may be summoned instead of issuing a warrant in the first instance.—If the summons be not obeyed, a warrant may be issued.*] Recites that it would conduce much to the improvement of the administration of criminal justice within England and Wales if the several statutes and parts of statutes relating to the duties of Her Majesty's justices of the peace therein with respect to persons charged with indictable offences were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment; and declares and enacts that in all cases where a charge or complaint (A.) shall be made before any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever, within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices is residing or being or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant (B.) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place to answer to such charge or complaint, and to be further dealt with according to law: provided always, that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (C.) directed to such person, requiring him to appear before the said justice or justices at a time and place to be therein mentioned, or before such other justice or justices of the same county, riding,



division, liberty, city, borough, or place as may then be there, and if after being served with such summons in manner hereinafter mentioned he shall fail to appear at such time and place, in obedience to such summons, then and in every such case the said justice or justices, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, may issue his or their warrant (D.) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charge or complaint, and to be further dealt with according to law: provided nevertheless, that nothing herein contained shall prevent any justice or justices of the peace from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in such summons for the appearance of the said accused party.

(A.)

*Information and Complaint for an Indictable Offence.*

— } The information and complaint of *C. D.* of —, [*yeoman*]  
to wit. } taken this — day of —, in the year of our Lord  
185—, before the undersigned [*one*] of Her Majesty's justices of the  
peace in and for the said [*county*] of —, who saith that [*&c.*  
*stating the offence.*]

Sworn before [*me*], the day and year first above mentioned, at  
—.  
J. S.

(B.)

*Warrant to apprehend a person charged with an Indictable Offence.*

To the constable of —, and to all other peace officers in the  
said [*county*] of —.

Whereas *A. B.* of —, [*labourer*] hath this day been charged upon oath before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said county of —, for that he on —, at —, did [*&c., stating shortly the offence*]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before [*me*], or some other of Her Majesty's justices of the peace in and for the said [*county*], to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [*county*] aforesaid.

J. S. (L.S.)



(C.)

*Summons to a Person charged with an Indictable Offence.*To *A. B.*, of —, [*labourer*].

Whereas you have this day been charged before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that you on —, at — [*&c., stating shortly the offence*]: These are therefore to command you, in Her Majesty's name, to be and appear before me on —, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same [*county*] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the county aforesaid.

*J. S.* (L.S.)

(D.)

*Warrant where the Summons is disobeyed.*

To the constable of —, and to all other peace officers in the said [*county*] of —.

Whereas on the — last past, *A. B.* of —, [*labourer*] was charged before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that [*&c., as in the summons*]: And whereas [*I*] then issued [*my*] summons to the said *A. B.*, commanding him in Her Majesty's name, to be and appear before [*me*] on —, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same [*county*] as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said *A. B.* hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons was duly served upon the said *A. B.*: These are therefore to command you, in Her Majesty's name forthwith to apprehend the said *A. B.*, and to bring him before me, or some other of Her Majesty's justices of the peace in and for the said [*county*], to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

*J. S.* (L.S.)

2. *Warrant to apprehend for offences committed on the high seas or abroad.*] That in all cases of indictable crimes or offences of any kind or nature whatsoever committed on the high seas, or in any creek, harbour, haven, or other place, in which the Admiralty of England have or claim to have jurisdiction, and in all cases of crimes



or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their warrant (E.) to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, to answer to the said charge, and to be further dealt with according to law.

The words "on land beyond the seas, &c." refer to the 9 Geo. 4, c. 31, s. 7, which render the subjects of the crown responsible for murder or manslaughter committed abroad; and when the offence has taken place within the territory of a foreign state, it is proper to aver, and will be necessary to prove that the party killed was a British subject (a).

(E.)

*Warrant to apprehend a Person charged with an Indictable Offence committed on the high seas or abroad.*

*For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any county of this realm, and within the jurisdiction of the Admiralty of England."*

*For offences committed abroad for which the parties may be indicted in this country the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of the United Kingdom, to wit, at —, in the kingdom of —," or "at —, in the East Indies," or "at —, in the Island of —, in the West Indies," or as the case may be.*

3. *Warrant to apprehend a party against whom an indictment is found.—If person indicted be already in prison for some other offence, justice may order him to be detained until removed by writ of habeas.]* That where any indictment shall be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general or quarter sessions of the peace, against any person who shall then be at large, and whether such person shall have been bound by any recognizance to appear to answer the same or not, the person who shall act as clerk of the indictments at such court of oyer and terminer or gaol delivery, or as a clerk of the peace at such sessions, at which the said indictment shall be found, shall at any time afterwards, after the end of the sessions of oyer and terminer or gaol delivery or sessions of the peace at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such

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(a) *R. v. Helsham*, 4 C. & P. 394.



person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.) of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough or place in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he and they are hereby required, to issue his or their warrant (G.) to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law, and afterwards, if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the same person who is charged and named in such indictment, shall, without further inquiry or examination, commit (H.) him for trial, or admit him to bail, in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment, at the time of such application, and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices and he and they are hereby required, upon it being proved before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I.) directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by Her Majesty's writ of habeas corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law.

(F.)

*Certificate of Indictment being found.*

I hereby certify, that at [a court of oyer and terminer and general gaol delivery, or a court of general quarter sessions of the peace] holden in and for the [county] of —, at —, in the said [county], on —, a bill of indictment was found by the grand jury against *A. B.*, therein described as *A. B.*, late of —, [labourer], for that he [*&c. stating shortly the offence*], and that the said *A. B.* had not appeared or pleaded to the said indictment.

Dated this — day of —, 185—.

*J. D.*

Clerk of the indictments on the — circuit,

or,

Clerk of the peace of and for the said [county].



(G.)

*Warrant to apprehend a Person indicted.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas it hath been duly certified by *J. D.*, clerk of the indictments on the — circuit, [or clerk of the peace of and for the [county] of —,] that, [*&c., stating the certificate*]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before [me], or some other justice or justices of the peace in and for the said [county], to be dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L.S.)

(H.)

*Warrant of Commitment of a Person indicted.*

To the constable of —, and to the keeper of the [common gaol or house of correction,] at —, in the said [county] of —.

Whereas by [my] warrant under my hand and seal, dated the — day of —, after reciting that it had been certified by *J. D.* [*&c., as in the certificate*], [I] commanded the constable of —, and all other peace officers of the said county, in Her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before [me], the undersigned [one] of Her Majesty's justices of the peace in and for the said [county], or before some other justice or justices of the peace in and for the said [county], to be dealt with according to law: and whereas the said *A. B.* hath been apprehended under and by virtue of the said warrant, and being now brought before [me], it is hereupon duly proved to [me] upon oath that the said *A. B.* is the same person who is named and charged in and by the said indictment: these are therefore to command you the said constable, in Her Majesty's name, forthwith to take and safely convey the said *A. B.* to the said [house of correction] at —, in the said [county], and there to deliver him to the keeper thereof, together with this precept: and I hereby command you the said keeper to receive the said *A. B.* into your custody in the said house of correction, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L.S.)



## (I.)

*Warrant to detain a Person indicted who is already in Custody for another Offence.*

To the the keeper of the [common gaol, or house of correction,] at  
—, in the said [county] of —.

Whereas it hath been duly certified by *J. D.* clerk of the indictments on the — circuit [or clerk of the peace of and for the county of —], that [*&c.*, stating the certificate]: and whereas [*I am*] informed that the said *A. B.* is in your custody in the said [common gaol] at — aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before [*me*] that the said *A. B.* so indicted as aforesaid, and the said *A. B.* in your custody as aforesaid, are one and the same person: these are therefore to command you, in Her Majesty's name, to detain the said *A. B.* in your custody in the [common gaol] aforesaid until by Her Majesty's writ of habeas corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L.S.)

4. *Warrant may be issued on Sunday.*] That it shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid or any search warrant on a Sunday as well as on any other day.

The duty of a constable in apprehending a party on a Sunday is provided for by statute 21 Car. 2, c. 7, s. 6, the Lord's Day Act. He may not do so except in cases of treason, felony, or breach of the peace (a).

5. *Justices for adjoining counties, &c., may act in one for the other.—Constables, &c., apprehending offenders in one such county, &c., may take them before such justice in the adjoining county, &c. if he act as a justice of both.*] That in cases where a justice of the peace for any county, riding, division, liberty, city, borough, or place shall be also justice of the peace for a county, riding, division, liberty, city, borough, or place next adjoining thereto or surrounded thereby, it shall and may be lawful for such justice of the peace to act as such justice for the one county, riding, division, liberty, city, borough, or other place whilst he is residing or happens to be in the other such county, riding, division, liberty, city, borough, or other place, in all matters and things hereinbefore or hereafter in this Act mentioned; and that all such acts of such justice, and the acts of any constable or other officer in obedience thereto, shall

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(a) See *Johnson v. Colston*, T. Raym, 250; *R. v. Myers*, 1 T. R. 265; *Rawlins v. Ellis*, 10 J. P. 789; 16 L. J., Ex. 5.



be as valid, good, and effectual in the law to all intents and purposes as if such justice at the time he shall so act as aforesaid were in the county, riding, division, liberty, city, borough, or other place for which he shall so act; and all constables and other officers for the county, riding, division, liberty, city, borough, or place for which such justice shall so act as aforesaid are hereby authorized and required to obey the warrants, orders, directions, act or acts of such justice, which in that behalf shall be granted, given, or done, and to do and perform their several offices and duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty; and any such constable or other peace officer, or any other person, apprehending or taking into custody any person offending against law, and whom he lawfully may and ought to apprehend or take into custody, by virtue of his office or otherwise, in any such county, riding, division, liberty, city, borough, or place, may lawfully take and convey such person so apprehended and taken as aforesaid to and before any such justice of the peace for such county, riding, division, liberty, city, borough, or place whilst such justice shall be in such adjoining county, riding, division, liberty, city, borough, or place as aforesaid, and the said constables and other peace officers, and all such other persons as aforesaid, are hereby authorized and required in all such cases so to act in all things as if the said justice of the peace were within the said county, riding, division, liberty, city, borough, or place for which he shall so act.

6. *Justices for a county, &c. may act for it in an adjoining city or place of exclusive jurisdiction.*] That it shall be lawful for any justice or justices of the peace acting for any county at large, or for any riding or division of such county, to act as such at any place within any city, town, or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, and situated within, surrounded by, or adjoining to any such county, riding, or division respectively, and that all and every such act and acts, matters and things, to be so done by such justice or justices within such city, town, or precinct, as justice or justices for such county, riding, or division respectively, shall be as valid and effectual in law as if the same had been done within such county, riding, or division respectively, to all intents and purposes whatsoever; provided always, that nothing in this Act contained shall extend to give power to the justice of the peace for any county, riding, or division, not being also justices for such city, town, or other precinct, or not having authority as justices of the peace therein, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town, or precinct, in any matter whatsoever.

7. *Authority of justices in detached parts of counties.*] Recites that doubts have arisen whether the powers given to justices by an Act passed in the session of parliament held in the second and third years of the reign of Her present Majesty, intituled an Act for the better administration of justice in detached parts of counties, are applicable in cases of summary jurisdiction and to acts merely ministerial; and declares and enacts, "that all the acts of any justice or justices and of any constable or officer in obedience thereto



shall be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justice or justices acts or act as if the same were to all intents and purposes part of the said county; and all constables and other officers of such detached part are hereby required to obey the warrants, orders, and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty.

8. *Information.*] That in all cases where a charge or complaint for any indictable offence shall be made before such justice or justices as aforesaid, if it be intended to issue a warrant in the first instance against the party or parties so charged, an information and complaint thereof (A.) in writing, on the oath or affirmation of the informant or of some witness or witnesses in that behalf shall be laid before such justice or justices: provided always, that in all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parol merely, and without any oath or affirmation whatsoever to support or substantiate the same: provided also that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examination of witnesses in that behalf, as hereinafter mentioned (a).

9. *Summons.—How served.*—*If party summoned do not attend, a warrant may issue.*] That upon such information and complaint being so laid as aforesaid the justice or justices receiving the same may, if he or they think fit, issue his or their summons or warrant respectively as hereinbefore directed to cause the person charged as aforesaid to be and appear before him or them, or any other justice or justices of the peace for the same county, riding, division, liberty city, borough, or place, to be dealt with according to law; and every such summons (C.) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the justice who shall issue such summons, or before such other justice or justices of the peace of the same county, riding, division, liberty city, borough, or place as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned,

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(a) See as to the form of the information, A., *ante*, p. 144.



to depose, if necessary, to the services of such summons; and if the person so served shall not be and appear before the justice or justices at the time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or justices to issue his or their warrant (D.) for apprehending the party so summoned, and bringing him before such justice or justices, or some other justice, or justices of the peace for the same county, division, liberty, city, borough, or place, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law; provided always, that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the mean time to remand the party so charged, or admit him to bail, in manner hereinafter mentioned (a).

Thus the constable is required by the Act itself to attend at the time and place mentioned in the summons for the appearance of the accused, to depose, if necessary, to the service of the summons.

10. *Warrant to apprehend.—How directed.—How and where executed.*] That every warrant (B.) hereafter to be issued by any justice or justices of the peace to apprehend any person charged with any indictable offence shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables or peace officers in the county or other district within which the justice or justices issuing such warrant has or have jurisdiction, or generally to all the constables or peace officers within such last-mentioned county or district, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing the said warrant, or before some other justice or justices of the peace in the same county, riding, division, liberty, city, borough, or place, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed; and such warrant may be executed by apprehending the offender at any place within the county, riding, division, liberty, city, borough, or place within which the justice or justices issuing the same shall have jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place, and within seven miles of the border

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(a) See the forms of the summons and warrant, C., D., *ante*, p. 145.



of such first-mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or other peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet or place within such county or district to execute the said warrant within any parish, township, or hamlet, or place situate within the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, in like manner as if such warrant were directed specially to such constable by name, and notwithstanding the place in which such warrant shall be executed shall not be within the parish, township, hamlet or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer: provided always, that no objection shall be taken or allowed to any such warrant for any defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail, in manner hereinafter mentioned (b).

11. *Regulations as to the backing of warrants.—Proviso.*] That if the person against whom any such warrant shall be issued as aforesaid shall not be found within the jurisdiction of the justice or justices by whom the same shall be issued, or if he shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in England or Wales out of the jurisdiction of the justice issuing such warrant, it shall and may be lawful for any justice of the peace for the county or place into which such person shall so escape or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone being made on oath of the hand-writing of the justice issuing such warrant, to make an indorsement (K.) on such warrant signed with his name, authorizing the execution of such warrant within the jurisdiction of the justice making such indorsement, and which indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same in such other county or place, and to carry the person against whom such warrant shall have issued, when apprehended, before the justice or justices of the peace who first issued the said warrant, or before some other justice or justices of the peace in and for the same county, riding, division, city, liberty, borough, or place, or before some justice or justices of the county, riding, division, liberty, city, borough, or place where the offence in the said warrant

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(b) See the form of the warrant, B., *ante*, p. 144.



mentioned appears therein to have been committed : provided always, that if the prosecutor, or any of the witnesses upon the part of the prosecution, shall then be in the county or place where such person shall have been so apprehended, the constable or other person or persons who shall have so apprehended such person, may, if so directed by the justice backing such warrant, take and convey him before the justice who shall have so backed the said warrant, or before some other justice or justices of the same county or place : and the said justice or justices may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or justices of the peace with an offence alleged to have been committed in another county or place than that in which such persons have been apprehended.

(K.)

*Indorsement in backing a Warrant.*

——— } Whereas proof upon oath hath this day been made be-  
to wit. } fore me, one of Her Majesty's justices of the peace for the  
said [county] of —, that the name of *J. S.*, to the within warrant  
subscribed, is of the hand-writing of the justice of the peace within  
mentioned ; I do therefore hereby authorize *W. T.*, who bringeth  
to me this warrant, and all other persons to whom this warrant was  
originally directed, or by whom it may lawfully be executed, and also  
all constables and other peace officers of the said [county] of —,  
to execute the same within the said last-mentioued [county]\*, and  
to bring the said *A. B.*, if apprehended within the same [county],  
before me, or before some other justice or justices of the peace of  
the same county, to be dealt with according to law.

Given under my hand, this ——day of ——, 185—.

*J. L.*

\* *The words following this asterisk are to be used only where the justice backing the warrant shall think fit, and may be omitted in backing English warrants in Ireland, Scotland, &c., or in backing Irish or Scotch warrants, &c. in England.*

(R. 1.)

*Warrant to convey the Accused before a Justice of the County, &c., in which the Offence was committed.*

To *W. T.*, constable of —, and to all other peace officers in  
the said [county] of —

Whereas *A. B.* of — [labourer], hath this day been charged before the undersigned, [one] of Her Majesty's justices of the peace in and for the said county of —, for that [ &c., as in the warrant to apprehend ] : and whereas [I] have taken the deposition of *C. D.*,



a witness examined by [*me*] in this behalf; but inasmuch as [*I*] am informed that the principal witnesses to prove the said offence against the said *A. B.* reside in the [*county*] of *C.*, where the said offence is alleged to have been committed, these are therefore to command you the said constable, in Her Majesty's name, forthwith to take and convey the said *A. B.* to the said [*county*] of *C.*, and there carry him before some justice or justices of the peace in and for that [*county*], and near unto the [*parish of D.*], where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and [*I*] hereby further command you the said constable to deliver to the said justice or justices the information in this behalf, and also the said deposition of *C. D.* now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this — day of —, in the year of our Lord, — at —, in the [*county*] aforesaid.

*J. S.* (L.S.)

12. *English warrants backed in Ireland, or Irish warrants backed in England.*] That if any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in England or Wales, by any justice of the peace, or by any judge of Her Majesty's court of Queen's Bench, or justice of oyer and terminer or gaol delivery, for any indictable offence against the laws of that part of the United Kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county or place in that part of the United Kingdom, called Ireland, or if any person against whom a warrant shall be issued in any county or place in Ireland, by any justice of the peace, or by any judge of Her Majesty's court of Queen's Bench there, or any justice of oyer and terminer or gaol delivery, for any crime or offence against the laws of that part of the United Kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in that part of the United Kingdom called England or Wales, it shall and may be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant in manner hereinbefore mentioned, or to the like effect, and which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county or place where such warrant shall be so indorsed, to execute the said warrant in the county or place where the justice so indorsing it shall have jurisdiction, by apprehending the person against whom such warrant shall have been granted, and to convey him before the justice or justices who granted the same, or before some other justice or justices of the peace in and for the same county or place, and which said justice or justices before whom he shall be so brought shall thereupon proceed in such manner as if the said person had been apprehended in the said last-mentioned county or place (*a*).

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(*a*) See the form of the indorsement, K., *ante* p.154.



13. *English warrants may be backed in the isles of Man, Guernsey, Jersey, Alderney, or Sark, and vice versâ.*] That if any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in England or Wales, by any justice of the peace, or by any judge of Her Majesty's court of Queen's Bench, or justices of oyer and terminer or gaol delivery, for any indictable offence, shall escape, go into, reside, or be supposed or suspected to be, in any of the isles of Man, Guernsey, Jersey, Alderney, or Sark, it shall be lawful for any officer within the district into which such accused person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, who shall have jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders within such district, to indorse (K.) such warrant in the manner hereinbefore mentioned, or to the like effect; or if any person against whom any warrant or process in the nature of a warrant, shall be issued in any of the isles aforesaid, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in England or Wales, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant or process in manner hereinbefore mentioned, and every such warrant or process, so indorsed, shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same respectively was originally directed, and also to all constables and peace officers in the county, district, or jurisdiction within which such warrant or process shall be so indorsed, to execute the same within the county, district, or place where the justice or officer indorsing the same has jurisdiction, and to convey such offender, when apprehended, into the county or district wherein the justice or person who issued such warrant or process shall have jurisdiction, and carry him before such justice or person or before some other justice or person within the same county or district who shall have jurisdiction to commit such offender to prison for trial, and such justice or person may thereupon proceed in such and the same manner as if the said offender had been apprehended within his jurisdiction.(a)

14. *English or Irish warrants may be backed in Scotland.*] That, if any person against whom a warrant shall be issued by any justice of the peace for any county or place within England or Wales or Ireland, or by any judge of Her Majesty's court of Queen's Bench or justice of oyer and terminer or gaol delivery in England or Ireland, for any crime or offence against the laws of those parts respectively of the United Kingdom of Great Britain and Ireland, shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in that part of the said United Kingdom called Scotland, it shall be lawful for the sheriff or steward, depute or substitute, or any justice of the peace of the county or place where such person or persons shall go into, reside, or be, or be supposed or suspected to be, to indorse

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(a) See the form of the indorsement, K., *ante*, p. 154.



(K.) the said warrant in manner hereinbefore mentioned, or to the like effect, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriff's officers, steward's officers, constables, and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same within the county or place where it shall have been so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in England, Wales, or Ireland, where the justice or justices who first issued the said warrant shall have jurisdiction in that behalf, and to carry him before such justice or justices, or before any other justice or justices of the peace of and for the same county or place, to be there dealt with according to law, and which said justice or justices are hereby authorized and required thereupon to proceed in such and the same manner as if the said offender had been apprehended within his or their jurisdiction. (b)

15. *Scotch warrants may be backed in England or Ireland.*] That if any person against whom a warrant shall be issued by the lord justice general, lord chief justice clerk, or any of the lords commissioners of justiciary, or by any sheriff or steward depute or substitute or justice of the peace of that part of the United Kingdom of Great Britain and Ireland called Scotland, for any crime or offence against the laws of that part of the United Kingdom, shall escape, go into, reside, or be, or shall be supposed or suspected to be, in any county or place in England or in Ireland, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or shall be supposed or suspected to be, to indorse (K.) the said warrant in manner hereinbefore mentioned, and which said warrant so indorsed shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where the justice so indorsing such warrant shall have jurisdiction, to execute the said warrant in the county or place where it is so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in Scotland next adjoining to that part of the United Kingdom called England, and carry him before the sheriff or steward, depute or substitute, or one of the justices of the peace of such county or place, and which said sheriff, steward depute or substitute, or justice of the peace, is hereby authorized and required thereupon to proceed in such and the same manner, according to the rules and practice of the law of Scotland, as if the said offender had been apprehended within such county or place in Scotland as last aforesaid (b).

16. *Summonses to witnesses to attend and give evidence.—If summons not obeyed warrant may be issued.—In what cases warrant in the first instance.—Persons refusing to be examined may be committed.*] That if it shall be made to appear to any justice of the peace by the oath or affirmation of any credible person, that any

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(b) See the form of the indorsement, K., ante, p. 154.



person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice may and is hereby required to issue his summons (L. 1) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justices or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what he shall know concerning the charge made against such accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or leaving the same for him with some person at his last or most usual place of abode) it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (L. 2) under his or their hands and seals to bring and have such person at a time and place therein mentioned before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may if necessary be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons it shall be lawful for him to issue his warrant (L. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (L. 4) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

The power given by this section is strictly limited to the case of a witness within the jurisdiction of the justice applied to. In all other cases the crown office subpoena must be used.



(L. 1.)

*Summons of a Witness.*To *E. F.* of —, [*labourer*].

Whereas information hath been laid before the undersigned [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, that *A. B.* [*&c., as in the summons or warrant against the accused,*] and it hath been made to appear to me upon [*oath*] that you are likely to give material evidence for the [*prosecution*]: these are therefore to require you to be and appear before me on — next, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same county as may then be there, to testify what you shall know concerning the said charge so made against the said *A. B.* as aforesaid. Herein fail not.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)

(L. 2.)

*Warrant where a Witness has not obeyed a Summons.*

To the constable of —, and to all other peace officers in the said [*county*] of —.

Whereas information having been laid before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, that *A. B.* [*&c., as in the summons*]; and it having been made to appear no [*me*] upon oath that *E. F.*, of —, [*labourer*], was likely to give material evidence for the prosecution, I did duly issue my summons to the said *E. F.*, requiring him to be and appear before me on —, at —, or before such other justice or justices of the peace for the same county as might then be there, to testify what he should know respecting the said charge so made against the said *A. B.* as aforesaid: and whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said *E. F.*: and whereas the said *E. F.* hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: these are therefore to command you to bring and have the said *E. F.* before me on —, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same [*county*] as may then be there, to testify what he shall know concerning the said charge so made against the said *A. B.* as aforesaid.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)



(L. 3.)

*Warrant for a Witness in the first Instance.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas information hath been laid before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of —, for that [*&c., as in summons*]; and it having been made to appear to [me] upon oath that *E. F.* of —, [*labourer*], is likely to give material evidence for the prosecution, and that it is probable that the said *E. F.* will not attend to give evidence without being compelled so to do: these are therefore to command you to bring and have the said *E. F.* before me on —, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same [county] as may then be there, to testify what he shall know concerning the said charge so made against the said *A. B.* as aforesaid.

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.

*J. S.* (L. S.)

(L. 4.)

*Warrant of Commitment of a Witness for refusing to be sworn or to give Evidence.*

To the constable of —, and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas *A. B.* was lately charged before the undersigned [one] of Her Majesty's justices of the peace in and for the said [county] of —, for that [*&c., as in the summons*]; and it having been made to appear to [me] upon oath that *E. F.*, of —, was likely to give material evidence for the prosecution, I duly issued my summons to the said *E. F.*, requiring him to be and appear before me on —, at —, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said *A. B.* as aforesaid; and the said *E. F.* now appearing before me [*or being brought before me by virtue of a warrant in that behalf, to testify as aforesaid*], and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do [*or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him*] without offering any just excuse for such his refusal: these are therefore to command you the said constable to take the said *E. F.*, and him safely to convey to the [house of correction] at —, in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *E. F.* into your custody in the said [house of correction], and him there safely keep for the space of — days for his said contempt,



unless he shall in the mean time consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L.S.)

17. *Examination of witnesses upon oath or affirmation.—Depositions in what cases read, when witness is dead or absent.*] That in all cases where any person shall appear or be brought before any justice or any justices of the peace charged with any indictable offence, whether committed in England or Wales, or upon the high seas, or on land beyond the sea, or whether such person appeared voluntarily upon summons or have been apprehended, with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid, shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid it shall be proved by the oath or affirmation of any credible witness, that any person whose depositions shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

The following cases have been decided on this section:—

The reading of the deposition is confined to the cases where the witness is since dead, or is unable to travel; it cannot be read where he is merely absent or residing abroad (a). But where the charge before the magistrate was for wounding a man, and the prosecutor was examined, but he afterwards died of the wound, and the prisoner was indicted for murder, it was holden that the examination might be read on the trial of the indictment (b).

If the caption of the deposition before the committing magistrate of a witness unable to travel and attend the trial, states the occasion of its being taken, and the matter referred to, it sufficiently describes

(a) *R. v. Austin*, 25 Law J. 48, m.

(b) *R. v. Buston*, 24 Law J. 5, m.



the examination of the witness; and the reception of the depositions in evidence cannot, on the ground of a defective caption, be objected to (a),

The written minutes of the examinations and cross-examinations of witnesses against prisoners charged with felony, had in their presence and before the magistrates, were sent to the office of the clerk to the magistrates to be written out. The witnesses attended in the office, and the person employed to write out the minutes put some questions to each of them for the purpose of rendering the depositions more correct, clear, and complete. Neither the magistrates nor the prisoners were present; but the answers were inserted in the depositions made from the minutes, and afterwards read over to and signed by the witnesses in the presence of the magistrates and the prisoners, when the witnesses were sworn to the truth of the depositions, and a full opportunity of cross-examining them afforded to the prisoners:—*Held*, that one of the witnesses was properly asked and bound to answer the question, whether he had made a certain statement to the person employed to write out the minutes; because evidence of the words spoken by him was the primary evidence of what he had then said, the depositions having been, until re-sworn and signed by the magistrates, the writing of a mere volunteer, and when re-sworn and signed by the magistrates, evidence only of what the witnesses then swore to be the truth. But it has since been decided that a prisoner is entitled, since the 11 & 12 Vict. c. 42, s. 17, by reason of his right to a full opportunity of cross-examining the witnesses against him, to hear the questions put to and the answers given by the witnesses on whose testimony he is to be committed for trial, and of comparing the written statement signed with the verbal statement made by them; that the proceeding above described was illegal; and that documents so prepared and sworn to, though purporting to be depositions, were not so in law (b).

When the examination may be read, it may be read as well before the grand jury, in order to find the bill, as at the trial (c).

(M.)

*Depositions of Witnesses.*

——— } The examination of C. D. of ———, [*farmer*], and E. F.,  
to wit. } of ———, [*labourer*], taken on [*oath*] this ——— day of ———,  
in the year of our Lord ———, at ———, in the [*county*]  
aforesaid, before the undersigned, [*one*] of Her Majesty's  
justices of the peace for the said [*county*], in the presence  
and hearing of A. B., who is charged this day before  
[*me*], for that he the said A. B. on ———, at ———, [*&c.*,  
*describing the offence as in a warrant of commitment.*]

This deponent C. D. on his [*oath*] saith as follows [*&c.*, *stating the depositions of the witness as nearly as possible in the words he uses. When his deposition is complete let him sign it*].

(a) *R. v. Langridge*, 13 J. P. 425;  
1 Den. C. C. 448.

(b) *R. v. Christopher*, 14 J. P. 43;  
1 Den. C. C. 536.

(c) *R. v. Clements*. 20 Law J. 193 m.



And this deponent [*E. F.*] upon his oath, saith as follows [*&c.*]

The above depositions of *C. D.* and *E. F.* were taken and [*sworn*] before me at —, on the day and year first above mentioned.

*J. S.*

18. *Statement of the accused.*] That after the examinations of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace or one of the justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him in these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" and whatever the prisoner shall then say in answer thereto shall be taken down in writing (*N.*), and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: provided always, that the said justice or justices before such accused person shall make any statement shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat: provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

The following cases have been decided on this section:—

A prisoner, when before the committing magistrate, and after having been cautioned by him in the manner prescribed by the 11 & 12 Vict. c. 42, s. 18, omitting the proviso, made a statement in writing which was taken down in writing, but not signed by him or by the committing magistrate; he was remanded, and when next brought up, on which occasion new witnesses were not examined, but the attorney for the prisoner put some questions to a witness who had been examined before, the prisoner was again cautioned but declined to make any statement. *Held*, that parol evidence of the first evidence was admissible at the trial (*a*).

If upon the trial of an indictment the depositions taken before the committing magistrates contain a statement by the accused in

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(*a*) *R. v. Bond*, 13 J. P. 796; 1 Den. C. C. 517; 19 Law, J. 138 m.



the form (M). given in the schedule to 11 & 12 Vict, c. 42, that statement is admissible in evidence on the part of the prosecution, without further proof. If the statement is not taken in that form, it may still be given in evidence against the prisoner upon proof of the signature of the magistrates, and that the statement was read over to and signed by the prisoner. If it should appear that any inducement or threat had been held out to the prisoner before he was taken before a magistrate, then, in order to let in evidence of a statement made before the magistrate, it would be necessary to prove that he was then cautioned by the magistrate in such a manner as to remove the effect of the previous threat or inducement; but the particular enactment contained in the first proviso to section 18 is directory only (a). But without this caution, a confession induced by either threat or promise by the prosecutor or by any person in his presence, cannot be given in evidence at the trial (b).

## (N.)

*Statement of the Accused.*

—: *A. B.* stands charged before the undersigned [*one*] of Her Majesty's justices of the peace in and for the [*county*] aforesaid, this — day of —, in the year of our Lord —, for that he the said *A. B.*, on —, at —, [*&c., as in the caption of the depositions*]; and the said charge being read to the said *A. B.*, and the witnesses for the prosecution, *C. D.* and *E. F.*, being severally examined in his presence, the said *A. B.* is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" whereupon the said *A. B.* saith as follows:

[*Here state whatever the prisoner may say, and in his very words, as nearly as possible. Get him to sign it if he will.*] *A. B.*

Taken before me at —, the day and year first above mentioned.  
*J. S.*

19.—*Place where examination taken not an open court.*] That the room or building in which such justice or justices shall take such examinations and statement as aforesaid, shall not be deemed an open court for that purpose: and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to or be or remain in such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing.

20.—*Binding over the prosecutors and witnesses by recognizance.—Recognizance, depositions, &c., to be transmitted to the court in which the trial is to be had.—Witnesses refusing to enter into recognizances, may be committed.*] That it shall be lawful for the

(a) *R. v. Sansome*, 14 J. P. 273; *v. Sleeman*, 23 Law J. 19, m.; *R. v. 1 Den. C. C. 545*; 19 Law J. 143 m. *Moore*, 21 Law J. 199, m.; and see

(b) See *R. v. Garner*, 18 Law J. 1 m.; *R. v. Baldry*, 21 Law J. 130 m. *R. v. Luckhurst*, 23 Law J. 18, m.; *R.*



justice or justices before whom any such witness shall be examined as aforesaid to bind by recognizance (O. 1) the prosecutor and every such witness to appear at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general or quarter sessions of the peace, at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which said recognizance shall particularly specify the profession, art, mystery, or trade of every such person entering into or acknowledging the same, together with his Christian and surname, and the parish, township, or place of his residence, and if his residence be in a city, town, or borough, the recognizance shall also particularly specify the name of the street, and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof, or a lodger therein; and the said recognizance, being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice (O. 2) thereof, signed by the said justice or justices, shall at the same time be given to the person bound thereby; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case, shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the said court on the first day of the sitting thereof, or at such other time as the judge, recorder, or justice, who is to preside in such court at the said trial, shall order and appoint: provided always, that if any such witness shall refuse to enter into or acknowledge such recognizance as aforesaid, it shall be lawful for such justice or justices of the peace, by his or their warrant (P. 1) to commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness shall duly enter into such recognizance as aforesaid before some one justice of the peace for the county, riding, division, liberty, city, borough, or place in which such gaol or house of correction shall be situate: provided, nevertheless, that if afterwards, from want of sufficient evidence in that behalf, or other cause, the justice or justices before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such justice or justices, or any other justice or justices of the same county, riding, division, liberty, city, borough, or place, by his or their order (P. 2) in that behalf, to order and direct the keeper of such common gaol or house of correction where such witness shall be so in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

The 5 & 6 Vict. c. 38, s. 1, enumerates the offences which do not raise the jurisdiction of the quarter sessions within the central criminal court district; the jurisdiction of the sessions is further restrained by the 4 & 5 Will. 4, c. 36, s. 17.



(O. 1.)

*Recognizance to prosecute or give Evidence.*

—: Be it remembered, That on the — day of — in the year of our Lord —, *C. D.*, of —, in the township of —, in the said county, *farmer*, [or *C. D.*, of No. 2, — street, in the parish of —, in the borough of —, *surgeon*, of which said house he is tenant,] personally came before me, one of Her Majesty's justices of the peace for the said county, and acknowledged himself to owe to our sovereign lady the Queen, the sum of —, of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs, and successors, if he the said *C. D.* shall fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at —, before me. *J. S.*

*Condition to prosecute.*

The condition of the within written recognizance is such, That whereas one *A. B.* was this day charged before me, *J. S.*, justice of the peace within mentioned, for that [*&c.*, as in the caption of the *depositions*], if, therefore, he the said *C. D.* shall appear at the next court of oyer and terminer or general gaol delivery [or at the next court of general quarter sessions of the peace] to be holden in and for the [*county*] of —\*, and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said *A. B.*, and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

*Condition to prosecute and and give Evidence.*

Same as the last Form to the asterisk\*, and then thus:—"and there prefer or cause to be preferred a bill of indictment against the said *A. B.* for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon as well to the jurors who shall then inquire of the said offence as also to them who shall pass upon the trial of the said *A. B.*, then the said recognizance to be void, or else to stand in full force and virtue."

*Condition to give Evidence.*

Same as the last Form but one to the asterisk\*, and then thus:—"and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said *A. B.* for the offence aforesaid, as well as to the jurors who shall there inquire of the said offence as also to the jurors who shall pass upon the trial of the said *A. B.*, if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue."



## (O. 2.)

*Notice of the said Recognizances to be given to the Prosecutor and his Witnesses.*

——— } Take notice, That yon C. D. of ———, are bound in the  
to wit. } sum of ———, to appear at the next court of [*general  
quarter sessions of the peace*] in and for the county of ———, to be  
holden at ———, in the said county, and then and there [*prosecute  
and*] give evidence against A. B.: and unless you then appear there  
and [*prosecute and*] give evidence accordingly, the recognizance  
entered into by you will be forthwith levied on you. Dated this  
—— day of ———, 185—. J. S.

## (P. 1.)

*Commitment of Witness for refusing to enter into the Recognizance.*

To the constable of ———, and to the keeper of the [*house of  
correction*] at ———, in the said [*county*] of ———.

Whereas A. B. was lately charged before the undersigned [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of ———, for that [*&c., as in the summons to witness*], and it having been made to appear to [*me*] upon oath that E. F., of ———, was likely to give material evidence for the prosecution, [*I*] duly issued [*my summons to the said E. F., requiring him to be and appear*] before [*me*] on ———, at ———, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as afore-said, and the said E. F. now appearing before [*me*], [*or being brought before [me] by virtue of a warrant in that behalf, to testify as afore-said,*] hath been now examined by [*me*] touching the premises, but being by [*me*] required to enter into a recognizance conditioned to give evidence against the said A. B. hath now refused so to do: These are therefore to command you the said constable to take the said E. F. and him safely to convey to the [*house of correction*] at ———, in the [*county*] aforesaid, and there deliver him to the said keeper thereof, together with this precept: and I do hereby command you the said keeper of the said [*house of correction*] to receive the said E. F. into your custody in the said [*house of correction*], there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime such E. F. shall duly enter into such recognizance as aforesaid in the sum of ——— pounds, before some one justice of the peace for the said [*county*], conditioned in the usual form to appear at the next court of [*oyer and terminer or general gaol delivery, or general quarter sessions of the peace,*] to be holden in and for the [*county*] of ———, and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the



said *A. B.* for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal, this — day of —, in the year of our Lord, at —, at — in the [county] aforesaid.

(P. 2.)

*Subsequent order to discharge the Witness.*

To the keeper of the [house of correction] at —, in the [county] of —.

Whereas by [my] order dated the — day of —, [instant], reciting that *A. B.* was lately before them, charged before [me] for a certain offence therein mentioned, and that *E. F.* having appeared before [me], and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said *A. B.*, and [I] therefore thereby committed the said *E. F.* to your custody, and required you safely to keep him until after the trial of the said *A. B.* for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid: And whereas for want of sufficient evidence against the said *A. B.* the said *A. B.* has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said *E. F.* should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said *E. F.* out of your custody as to the said commitment, and suffer him to go at large.

Given under [my] hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L.S.)

21. *Remanding the accused.*] That if from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to and for the justice or justices before whom the accused shall appear or be brought, by his or their warrant (Q. 1), from time to time to remand the party accused for such time as by such justice or justices, in their discretion, shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such justice or justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the said justice or justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing such examination: provided always, that any such justice or justices may order such accused party to be brought before



him or them, or before any other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, at any time before the expiration of the time for which such accused party shall be so remanded, and the gaoler or officer in whose custody he shall then be, shall duly obey such order: provided also, that, instead of retaining the accused party in custody during the period for which he shall be so remanded, any one justice of the peace before whom such accused party shall so appear or be brought as aforesaid, may discharge him, upon his entering into a recognizance (Q. 2, 3), with or without a surety or sureties, at the discretion of such justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if such accused party shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice, or any other justice of the peace who may then and there be present, upon certifying (Q. 4) on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place with which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said accused part.

(Q. 1.)

*Warrant remanding a Prisoner.*

To the constable of — and to the [*keeper of the house of correction*] at —, in the said [*county*] of —.

Whereas *A. B.* was this day charged before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that [*&c., as in the warrant to apprehend*]; and it appears to me to be necessary to remand the said *A. B.*: these are therefore to command you the said constable, in Her Majesty's name, forthwith to convey the said *A. B.* to the [*house of correction*] at —, in the said [*county*], and there to deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said *A. B.* into your custody in the said house of correction, and there safely keep him until the — day of — instant, when I hereby command you to have him at —, at — o'clock in the forenoon of the same day before *me*, or before such other justice or justices of the peace for the said [*county*] as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

*J. S.* (L.S.)



## (Q. 2.)

*Recognizance of Bail instead of Remand, on an Adjournment of Examination.*

—: Be it remembered, that on the — day of —, in the year of our Lord —, *A. B.* of —, *labourer*, *L. M.* of —, *grocer*, and *N. O.* of —, *butcher*, personally came before me, one of Her Majesty's justices of the peace for the said [*county*], and severally acknowledged themselves to owe to our lady the Queen the several sums following; that is to say, the said *A. B.* the sum of — and the said *L. M.* and *N. O.* the sum of — each, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said *A. B.* fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at — before me, *J. S.*

*Condition.*

The condition of the within-written recognizance is such that whereas the within-bounden *A. B.* was this day [*or on — last past*] charged before me, for that [*&c., as in the warrant*]: and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the — day of — instant; if therefore the said *A. B.* shall appear before me on the said — day of — instant, at — o'clock in the forenoon, or before such other justice or justices of the peace for the said [*county*] as may then be there, to answer [*further*] to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

## (Q. 3.)

*Notice of such Recognizance to be given to the Accused and his Sureties.*

—: Take notice, that you *A. B.* of —, are bound in the sum of —, and your sureties *L. M.* and *N. O.* in the sum of — each, that you *A. B.* appear before me, *J. S.* one of Her Majesty's justices of the peace for the [*county*] of —, on — the — day of — instant, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same [*county*] as may then be there, to answer further to the charge made against you by *C. D.*, and to be further dealt with according to law; and unless you, *A. B.*, personally appear accordingly, the recognizances entered into by yourself and sureties will be forthwith levied on you and them.

Dated this — day of —. 185—.

*J. S.*



(Q. 4.)

*Certificate of Non-appearance to be indorsed on the Recognizance.*

I hereby certify that the said *A. B.* hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S.

22. *Examination, &c., where the offence was committed in another county, &c.—How, if the evidence prove the charge; how, if not.—Costs of conveying the accused into the proper county, &c.*] That it often happens that a person is charged before a justice of the peace with an offence alleged to have been committed in another county or place than that in which such person has been apprehended or in which such justice has jurisdiction, and it is necessary to make provision as to the manner of taking the examination of the witnesses, and of committing the party accused, or admitting him to bail, in such a case, and enacts, that whenever a person shall appear or shall be brought before a justice or justices of the peace in the county, riding, division, liberty, city, borough, or place wherein such justice or justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any county or place within England, or Wales wherein such justice or justices shall not have jurisdiction, it shall be lawful for such justice or justices, and he and they are hereby required to examine such witnesses, and receive such evidence in proof of such charge as shall be produced before him or them, within his or their jurisdiction; and if in his or their opinion such testimony and evidence shall be sufficient proof of the charge made against such accused party, such justice or justices shall thereupon commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where the offence is alleged to have been committed, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor (if he have appeared before him or them) and the witnesses by recognizance accordingly, as is hereinbefore mentioned; but if such testimony and evidence shall not in the opinion of such justice or justices be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such justice or justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence, as hereinbefore is mentioned, and such justice or justices shall, by warrant (R. 1) under his or their hand and seal or hands and seals, order such accused party to be taken before some justice or justices of the peace in and for the county, riding, division, liberty, city, borough, or place where and near unto the place where the offence is alleged to have been committed, and shall at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him or them, to the constable who shall have the execution of such last-mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused in obedience to the said warrant, and which depositions and recog-



nizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last-mentioned justice or justices, and shall, together with such depositions and recognizances as such last-mentioned justice or justices shall take in the matter of such charge against the said accused party, be transmitted to the clerk of the court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case the accused party shall be taken before the justice or justices last aforesaid by virtue of the said last-mentioned warrant, the constable or other person or persons to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned justice or justices, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices; and upon the said constable or other person producing the said accused party before such justice or justices, and delivering him into the custody of such person as the said justice or justices shall direct or name in that behalf, and upon the said constable delivering to the said justice or justices the warrant, information (if any), depositions, and recognizances aforesaid, and proving by oath the hand-writing of the justice or justices who shall have subscribed the same, such justice or justices to whom the said accused party is so produced shall thereupon forthwith ascertain the sum which ought to be paid to such constable or other person for conveying such accused party and taking him before such justice or justices, as also his reasonable costs and expenses of returning, and thereupon such justice or justices shall make an order (R. 2) upon the treasurer of the county, riding, division, or liberty, city, borough, or place, or if such city, borough, or place shall be contributory to the county rate of any county, riding, division, or liberty, then upon the treasurer of such county, riding, division, or liberty, respectively to which it is contributory, for payment of such constable or other person of the sum so ascertained to be payable to him in that behalf, and the said treasurer, upon such order being produced to him, shall pay the amount to the said constable or other person producing the same, or to any person who shall present the same to him for payment: provided always, that if such last-mentioned justice or justices shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned justice or justices as aforesaid shall be null and void (a).

The constable should be prepared with his bill of costs when he goes before the magistrate. It may be easily framed from the form in the schedule (T. 2) *post*, p. 179.

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(a) (R. 1.)—See the form of this warrant to convey the accused before a justice of the peace of the county, &c. in which the offence was committed, *ante*, p. 154.



(R. 2.)

*Order for Payment of the Constable's Expenses.*

To *R. W.* esquire, treasurer of the said county of *C.*

Whereas *W. T.*, constable of —, in the county of *A.*, hath by virtue of and in obedience to a certain warrant of *J. S.* esquire, [*one*] of Her Majesty's justices of the peace in and for the said county of *A.*, taken and conveyed one *A. B.*, charged before the said *J. S.* with having [*&c.*, *stating shortly the offence*], from —, in the said county of *A.* to —, in the said county of *C.*, a distance of — miles, and produced the said *A. B.* before me *J. P.*, one of Her Majesty's justices of the peace in and for the said county of *C.*, and delivered him into the custody of — by [*my*] direction, to answer to the said charge, and further to be dealt with according to law: and whereas the said *W. T.* hath also delivered to [*me*] the said warrant, together with the information in that behalf, and also the deposition of *C. D.* in the said warrant mentioned, and hath proved to [*me*] upon oath, the handwriting of the said *J. S.* subscribed to the same: and whereas [*I*] have ascertained that the sum which ought to be paid to the said *W. T.* for conveying the said *A. B.* from the said county of *A.* to the said county of *C.*, and taking him before [*me*] is the sum of —, and that the reasonable expenses of the said *W. T.* in returning will amount to the further sum of —, making together the sum of —: these are therefore to order you, as such treasurer of the said county of *C.*, to pay unto the said *W. T.* the said sum of — according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this — day of —, 185—.

23. *Power to justice to admit to bail persons charged with felony and certain misdemeanors.—Bail in the like cases after commitment for trial.—Justice may admit to bail persons charged with other misdemeanors.—Certain recognizance to be transmitted to committing justices.—No bail in cases of treason but by order of secretary of state, &c.*] That where any person shall appear or be brought before a justice of the peace charged with any felony, or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanor in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanor for the prosecution of which the costs may be allowed out of the county rate, such justice of the peace may, in his discretion, admit such person to bail, upon his procuring and producing such surety or sureties as in the opinion of such justice



will be sufficient to insure the appearance of such accused person at the time and place when and where he is to be tried for such offence; and thereupon such justice shall take the recognizance (S. 1, 2) of the said accused person, and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful, at any time afterwards, and before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, for the justice or justices of the peace who shall have signed the warrant for his commitment, in his or their discretion, to admit such accused person to bail in manner aforesaid; or if such committing justice or justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanors, certify (S. 3) on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, it shall be lawful for any justice of the peace, attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate, to admit such accused person to bail in manner aforesaid; or if it shall be inconvenient for the surety or sureties, in such a case, to attend at such gaol or prison to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate (S. 4) as aforesaid, and upon the same being produced to any justice of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for such last-mentioned justice to take the recognizance of the surety or sureties in conformity with such certificate, and upon such recognizance being transmitted to the keeper of such gaol or prison, and produced, together with the certificate on the warrant of commitment as aforesaid to any justice of the peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party, and to order him to be discharged out of custody as to that commitment, as hereinafter mentioned; and where any person shall be charged before any justice of the peace with any indictable misdemeanor other than those hereinbefore mentioned, such justice, after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall admit him to bail in manner aforesaid, or if he have been committed to prison, and shall apply to any one of the visiting justices of such prison, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, to be admitted to bail, such justice shall accordingly admit him to bail in manner aforesaid; and in all cases where such accused person in custody shall be admitted to bail by a justice of the peace other than the committing justice or justices as aforesaid, such justice of the peace so admitting him to bail shall forthwith transmit the re-



cognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted, with the examinations, to the proper officer: provided nevertheless, that no justice or justices of the peace shall admit any person to bail for treason, nor shall such person be admitted to bail, except by order of one of Her Majesty's secretaries of state or by Her Majesty's court of Queen's Bench at Westminster, or a judge thereof in vacation: provided also, that when, in cases of misdemeanor, the defendant shall be entitled to a traverse at the next assizes or quarter sessions, and shall not be bound to take his trial until the second assizes or sessions, in every such case the recognizance (S. 1) of bail shall be conditioned that he shall appear and plead at the next assizes or sessions, and then traverse the indictment, and that he shall surrender and take his trial at such second assizes or sessions, unless such accused party shall, before he enter into such recognizance, choose and consent to take his trial at such first assizes or sessions, in which case the recognizance may be in the ordinary form hereinbefore mentioned.

The bail is taken by stating verbally to the prisoner and his sureties the substance of the recognizance thus: "You, A. B., of —, and you, L. M., of —, and you, N. O., of —, severally acknowledge yourselves to owe to our sovereign lady the Queen the several sums following, that is to say,—you, the said A. B., the sum of," &c., with the condition also in the second person. The recognizance is afterwards drawn up in form, and at the time of entering into it, a note of it is given to the accused and his sureties.

## (S. 1.)

*Recognizance of Bail.*

Be it remembered, that on the — day of —, in the year of our Lord —, A. B. of —, *labourer*, L. M. of —, *grocer*, and N. O. of —, *butcher*, personally came before [*us*] the undersigned, two of Her Majesty's justices of the peace for the said [*county*], and severally acknowledged themselves to owe to our lady the Queen the several sums following; (that is to say,) the said A. B. the sum of —, and the said L. M. and N. O. the sum of — each, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed.

Taken and acknowledged the day and year first above-mentioned, at —, before us.

J. S.

J. N.

*Condition in ordinary Cases.*

The condition of the within-written recognizance is such that whereas the said A. B. was this day charged before [*us*], the justices within mentioned, for that [*&c., as in the warrant*]; if therefore the said A. B. will appear at the next court of oyer and terminer and general gaol delivery [*or court of general quarter sessions of the*



peace] to be holden in and for the county of —, and there surrender himself into the custody of the keeper of the [*common gaol*] there, and plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and take his trial upon the same, and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

*Condition where the Defendant is entitled to a Traverse.*

The condition of the within-written recognizance is such, that whereas the said *A. B.* was this day charged before [*me*], the justice within mentioned, for that [*&c., as in the warrant or summons*]; if therefore the said *A. B.* will appear at the next court of general quarter sessions of the peace [*or court of oyer and terminer and general gaol delivery*] to be holden in and for the county of —, and there plead to such indictment as may be found against him by the grand jury for or in respect of the charge aforesaid, and shall afterwards at the then next court of general quarter sessions of the peace [*or court of oyer and terminer and general gaol delivery*] surrender himself into the custody of the keeper of the [*house of correction*] there, and take his trial upon the said indictment, and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

(S. 2.)

*Notice of the said Recognizance to be given to the Accused and his Bail.*

Take notice, that you *A. B.* of —, are bound in the sum of —, and your [*sureties L. M. and N. O.*] in the sum of — each, that you *A. B.* appear [*&c., as in the condition of the recognizance*], and not depart the said court without leave; and unless you the said *A. B.* personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this — day of —, 185—.

*J. S.*

(S. 3.)

*Certificate of consent to Bail by the committing Justice indorsed on the Commitment.*

I hereby certify, that I consent to the within-named *A. B.* being bailed by recognizance, himself in —, and [*two*] sureties in — each.

*J. S.*

(S. 4.)

*The like, on a separate Paper.*

Whereas *A. B.* was on the — committed by me to the [*house of correction*] at —, charged with [*&c., naming the offence shortly*]:



I hereby certify, that I consent to the said *A. B.* being bailed by recognizance, himself in —, and [*two*] sureties in — each.

Dated the — day of —, 185—.

*J. S.*

24. *When justice admits a person to bail after commitment, a writ of deliverance shall be sent to him if not detained for any other offence.]* That in all cases where a justice or justices of the peace shall admit to bail any person who shall then be in prison charged with the offence for which he shall be so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison a warrant of deliverance (S. 5) under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper he shall forthwith obey the same.

This is the gaoler's authority for discharging the prisoner; if he discharge the prisoner without it, he is guilty of an escape.

(S. 5.)

*Warrant of Deliverance on Bail being given for a Prisoner already committed.*

To the keeper of the [*house of correction*] at —, in the said [*county*] of —.

Whereas *A. B.*, late of —, *labourer*, hath before [*us, two*] of Her Majesty's justices of the peace in and for the said county, entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer and general gaol delivery [*or court of general quarter sessions of the peace*] to be holden in and for the county of —, to answer our sovereign lady the Queen, for that [*&c., as in the commitment*], for which he was taken and committed to your said [*house of correction*]: These are therefore to command you, in Her said Majesty's name, that if the said *A. B.* do remain in your custody in the said [*house of correction*] for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

*J. S.* (L.S.)

*J. N.* (L.S.)

25. *If, after hearing evidence against the accused, it is not thought sufficient to warrant commitment, he shall be discharged; but if evidence considered sufficient, justice shall, by warrant, commit the accused for trial.]* That when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such justice



or justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant (T. 1), commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place to which by law he may now be committed, or, in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the county, riding, division, liberty, city, borough, or place within which such justice or justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinbefore mentioned.

(T. 1.)

*Warrant of Commitment.*

To the constable of —, and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas *A. B.* was this day charged before me, *J. S.*, one of Her Majesty's justices of the peace in and for the said [county] of —, on the oath of *C. D.* of —, *farmer*, and others for that [*&c.*, *stating shortly the offence*]: These are therefore to command you the said constable of —, to take the said *A. B.*, and him safely to convey to the [house of correction] at —, aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S. (L. S.)*

26. *Conveying prisoners to gaol.—Costs thereof, how, and by whom paid.*] That the constable or any of the constables or other persons to whom the said warrant of commitment shall be directed shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper, or governor of such gaol or prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt (T. 2) for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper, or governor: and in all cases where such constable or other person shall be entitled to his costs or expenses for conveying such person to such prison as aforesaid it shall be lawful for the justice or justices who shall have committed the accused party, or for any justice of the peace in and for the said county, riding, division, or other place of exclusive jurisdiction wherein the offence is alleged in the said warrant to have been committed, to ascertain the sum which ought to be paid to such constable or other



person for conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning, and thereupon such justice shall make an order (T. 2) upon the treasurer of such county, riding, division, liberty, or place of exclusive jurisdiction, or if such place of exclusive jurisdiction shall be contributory to the county rate of any county, riding, or division, then upon the treasurer of such county, riding, or division respectively, or, in the county of Middlesex, upon the overseers of the poor of the parish or place within which the offence is alleged to have been committed, for payment to such constable or other person of the sum so ascertained to be payable to him in that behalf; and the said treasurer or overseers, upon such order being produced to him or them respectively, shall pay the amount thereof to such constable or other person producing the same, or to any person who shall present the same to him or them for payment; provided nevertheless, that if it shall appear to the justice or justices by whom any such warrant of commitment against such prisoner shall be granted as aforesaid that such prisoner hath money sufficient to pay the expenses, or some part thereof, of conveying him to such gaol or prison, it shall be lawful for such justice or justices, in his or their discretion, to order such money or a sufficient part thereof to be applied to such purpose.

## (T 2.)

*Gaoler's Receipt to the Constable for the Prisoner, and Justice's Order thereon for Payment of the Constable's Expenses in executing the Commitment.*

I hereby certify, that I have received from *W. T.*, constable of —, the body of *A. B.*, together with a warrant under the hand and seal of *J. S.* esquire, one of Her Majesty's justices of the peace for the [county] of —, and that the said *A. B.* was [sober, or as the case may be,] at the time he was so delivered into my custody.

*P. K.*

Keeper of the house of correction [or common gaol] at —.

## CONSTABLE'S EXPENSES:

£ s. d.

|                                                                                               |   |
|-----------------------------------------------------------------------------------------------|---|
| For conveying the above <i>A. B.</i> from — to —,                                             | } |
| [by railway] at — per mile . . . . .                                                          |   |
| For conveying him to and from the railway station                                             | } |
| For subsistence of prisoner whilst in custody after commitment — days, at — per day . . . . . |   |
| For his lodging — nights, at — per night . . . . .                                            | } |
| Constable — days, at — per day . . . . .                                                      |   |
| [One] assistant [if necessary] — days, at —                                                   | } |
| per day . . . . .                                                                             |   |

Total £

To *R. W.* esquire, treasurer of the said [county] of —.



Whereas *W. T.*, constable of —, in the county of —, hath produced unto me, *J. P.*, one of Her Majesty's justices of the peace in and for the said county of — (wherein the offence hereinafter mentioned is alleged to have been committed), the above receipt of *P. K.*, keeper of the [house of correction] at —; And whereas, in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said *W. T.* for conveying the said *A. B.* from —, in the said county of —, to the said [house of correction] — is —, and that the reasonable expenses of the said *W. T.* in returning will amount to the further sum of —, making together the sum of —: These are therefore to order you, as such treasurer of the said county of —, to pay unto the said *W. T.* the said sum of —, according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this — day of —, 185—.

*J. P.*

Received the — day of —, 185—, of the treasurer of the [county] of —, the sum of —, being the amount of the above order.

£ —.

As to payment by the county treasurer, where the prisoner is not able to pay these costs, see *Liverick v. Mercer*, 22 Law J. 81, m.

The statute 3 Jac. 1, c. 10, s. 1 is not affected by this; the goods of the offender therefore are still liable to make good expenses of conveyance to prison and the charges of those who guard him thither.

27. *Defendant entitled to copies of the depositions.*] That at any time after all the examinations aforesaid shall have been completed, and before the first day of the assizes or sessions or other first sitting of the court at which any person committed to prison or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to have, of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding at the rate of three halfpence for each folio of ninety words.

The effect of this section was discussed in the case of *Ex parte Humphreys*, 14 J. P. 346, 19 Law J. 189 m.: There an information was laid before three justices at petty sessions by G. H. against W. H., setting forth that G. H. apprehended some bodily harm from W. H., unless he was restrained therefrom by law; and thereupon the justices heard the case, and required W. H. to enter into his recognizance with sureties for his appearance at the next general quarter sessions, to do what should then be required of him, and also in the meantime to keep the peace, and in default to be committed. Not being able to find sureties, W. H. was committed to prison, when he applied to the justices for a copy of the depositions taken against him, and was refused. Subsequently he was discharged by the sessions, whereupon he obtained a rule *nisi* calling on the justices to furnish him with copies of the depositions under 11 & 12



Vict. c. 42, s. 27: *Held*, that the section had only reference to cases where a party was committed, or held to bail, to take his trial; and that as in this case he was not committed for trial for any offence, he was not entitled to copies of the depositions.

28. *Forms in schedule valid.*] That the several forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

29. *Metropolitan police magistrates and stipendiary magistrates in other places may act alone.*] That any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatsoever is authorized by this Act to be done by any one or more justice or justices of the peace; and that the several forms in the schedule to this Act contained may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate: and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the tenth year of the reign of His late Majesty King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis," or in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for further improving the Police in and near the Metropolis," or in an Act passed in the same year of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," or in an Act passed in the fourth year of the reign of Her present Majesty, intituled "An Act for better defining the Powers of Justice within the Metropolitan Police District."

30. *The lord mayor or any alderman may act alone.*—*Nothing to affect powers, &c., contained in 2 & 3 Vict. c. 94.*] That it shall be lawful for the lord mayor of the city of London, or for any alderman of the said city, for the time being, sitting at the Mansion-house or Guildhall justice rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the Police in the City of London."

31. *Chief magistrate of Bow-street may be a justice for Berks, without qualification.*] That the chief magistrate of the metropolitan police court at Bow-street for the time being shall be a justice of the peace of and for the county of Berks, if his name be inserted in the commission of the peace for that county, without possessing the qualification by estate required by law in that behalf, and without taking any oath of qualification.

32. *Act to extend to Berwick-upon-Tweed, but not to Scotland,*



*Ireland, &c. except as to backing warrants.]* That the town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this Act, but nothing in this Act shall be deemed or taken to extend to Scotland or Ireland, or to the isles of Man, Jersey, or Guernsey, save and except the several provisions respectively hereinbefore contained respecting the backing of warrants, and also nothing in this Act shall be deemed to alter or affect the jurisdiction or practice of Her Majesty's court of Queen's Bench.

33. *Commencement of Act.* That this Act shall commence and take effect on the second of October, in the year of our Lord one thousand eight hundred and forty-eight.

34. *After commencement of this Act the following Acts and parts of Acts repealed.]* That the following statutes and parts of statutes shall from and after the day on which this Act shall commence and take effect be and the same are hereby repealed; (that is to say), a certain Act of parliament made and passed in the thirteenth year of the reign of His late Majesty King George the Third, intituled "An Act for the more effectual execution of Criminal Laws in the two Parts of the United Kingdom;" and a certain other Act made and passed in the twenty-eighth year of the reign of His said late Majesty King George the Third, intituled, "An Act to enable Justices of the Peace to act as such in certain Cases out of the Limits of the Counties in which they actually are;" and so much of a certain other Act made and passed in the forty-fourth year of the reign of His late Majesty King George the Third, intituled "An Act to render more easy the apprehending and bringing to Trial Offenders escaping from one Part of the United Kingdom to the other, and also from one County to another," as relates to the apprehension of offenders escaping from Ireland into England, or from England into Ireland, and to the backing of warrants against such offenders; and so much of a certain other Act made and passed in the forty-fifth year of the reign of His said Majesty King George the Third, intituled "An Act to amend two Acts of the Thirteenth and Forty-fourth Years of His present Majesty, for the more effectual execution of the Criminal Laws, and more easy apprehending and bringing to Trial Offenders escaping from one Part of the United Kingdom to the other, and from one County to another," as relates to the bailing of offenders escaping from Ireland into England, or from England into Ireland; and also a certain other Act made and passed in the fifty-fourth year of the reign of His said late Majesty King George the Third, intituled "An Act for the more easy apprehending and trying of Offenders escaping from one Part of the United Kingdom to the other;" and also a certain other Act, made and passed in the first year of the reign of His late Majesty King George the Fourth, intituled "An Act to amend the Act made in the Twenty-eighth Year of the Reign of King George the Third, intituled "An Act to enable Justices of the Peace to act as such in certain Cases out of the Limits of the Counties in which they actually are;" and so much of a certain other Act made and passed in the third year of the reign of His said late Majesty King George the Fourth, intituled "An Act for the more speedy return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated," as relates to the form of recognizances, and to the notice to be given to



persons acknowledging the same; and so much of a certain other Act made and passed in the seventh year of the reign of His said late Majesty King George the Fourth, intituled "An Act to enable Commissioners for trying Offences upon the Sea, and Justices of the Peace, to take Examinations touching such Offences, and to commit to safe Custody Persons charged therewith," as relates to the taking of such examinations, and the commitment of persons so charged by justices of the peace: and so much of a certain other Act made and passed in the said seventh year of the reign of His said late Majesty King George the Fourth, intituled "An Act for improving the Administration of Criminal Justice in England," as relates to the taking of bail in cases of felony, and to the taking of the examinations and informations against persons charged with felonies and misdemeanors, and binding persons by recognizance to prosecute or give evidence; and so much of a certain Act made and passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled "An Act for preventing the vexatious Removal of Indictments into the court of Queen's Bench, and for extending the Provisions of an Act of the fifth year of King William and Queen Mary, for preventing Delays at the Quarter Sessions of the Peace, to other Indictments, and for extending the Provisions of an Act of the Seventh Year of King George the Fourth as to taking Bail in cases of Felony," as relates to the taking of bail in cases of felony; and so much of a certain other Act made and passed in the seventh year of the reign of His said late Majesty King William the Fourth, intituled "An Act for enabling Persons indicted for Felony to make their Defence by Counsel or Attorney," as relates to the right of parties charged with offences to have copies of the depositions or examinations against them; and all other Act or Acts or parts of Acts which are inconsistent with the provisions of this Act; save and except so much of the said several Acts as repeal any other Act or parts of Acts, and also except as to proceedings now pending to which the same or any of them are applicable.

*By stat. 13 & 14 Vict. c. 91.—An Act to authorize Justices of any Borough having a separate Gaol to commit Assize Prisoners to such Gaol, and to extend the Jurisdiction of Borough Justices to all Offences and Matters arising within the Borough for which they act,—it is enacted:—*

Sect. 1. *Prisoners may be committed to borough gaols, for trial at the assizes.]* That great inconvenience and expense has been found to result to cities and boroughs having or providing and maintaining at their own cost gaols or houses of correction, from the necessity of committing to the common gaol of the county in which such city or borough may be situated for trial at the assizes holden for such county persons charged with offences committed within the limits of such city or borough, and it is expedient that the law should be altered and amended: and that it is also expedient that justices of the peace acting for any city or borough should have the same powers and authorities in all respects with regard to offences committed and matters arising within the limits of such city or borough



as justices of the peace for the county within which such city or borough is situated now have with regard to such offences or matters under or by virtue of any local or general Act of parliament: and enacts, that from and after the passing of this Act it shall be lawful for any justice of the peace acting for any city or borough now having or providing and maintaining at its own cost, or which shall hereafter have or provide and maintain at its own cost, a gaol or house of correction, to commit for safe custody to such gaol or house of correction, for trial at the assizes to be holden for the county in which such city or borough may be situated, any person charged before him with any offence, except murder, committed within the limits of such city or borough triable at such assizes, and the commitment shall specify that such person is committed under the authority of this Act, and whenever any such person shall be committed to any such gaol or house of correction for trial at such assizes, the keeper of such gaol or house of correction shall deliver to the judges of assize a calendar of all prisoners in his custody for trial at such assizes, in the same way that the sheriff of the county would be by law required to do if such prisoners had been committed to the common gaol of the county in which such city or borough may be situated; and the justice or justices by whom any person charged as aforesaid shall be committed shall deliver or cause to be delivered to the proper officer of the court the several recognizances, informations, depositions, and statements relative to such person at the time and in the manner that would be required in case such person had been committed to such county gaol.

2. *Nothing to authorize justices to commit persons charged with murder to any other than the county gaol—As to expenses incurred in maintenance of last-mentioned prisoners.*] Provided that nothing herein contained shall be construed to give any justice of the peace acting for any city or borough power to commit persons charged with murder to the gaol or house of correction of any city or borough for trial at the assizes to be holden for the county in which such city or borough may be situated, but such justices shall and they are hereby authorized and required to commit all such persons to the common gaol of such county for trial in such and the same manner as if this Act had not passed: provided also, that the expenses properly incurred by such county in the maintenance, safe custody, and care of such last mentioned prisoners so committed whilst in custody in such county gaol shall be borne and paid by such city or borough in the manner hereinafter provided with respect to prisoners removed to the county gaol for trial at the assizes.

3. *Prisoners committed to borough gaols to be removed to county gaol previous to trial.*] That all persons who may under the authority of this Act be committed to the gaol or house of correction of any city or borough for trial at the assizes to be holden for the county in which such city or borough may be situated shall in due time be removed by the gaoler or keeper of such gaol or house of correction, with their commitments and detainers, to the common gaol of the county, in order that they may be tried at the assizes to be holden for such county, and such removal shall not be deemed or taken to be an escape.



4. *Prisoners whilst under removal to be deemed to be in proper legal custody.*] That every prisoner so removed shall for and during the time of such removal, and also for and during such time as he shall be detained in the county gaol, be to all intents and purposes deemed and considered to be in the proper legal custody, notwithstanding he may in effecting such removal have been taken out of the jurisdiction of the city or borough to the gaol or house of correction of which he may have been originally committed into any other jurisdiction, or out of the county in which such gaol or house of correction may be situated into or through any other county or division of a county; and no action or other proceeding shall or may be maintained by such prisoner or by any other person against the gaoler or keeper of the gaol or house of correction of any city or borough, or against the gaoler or keeper of the common gaol of the county, by reason or in consequence of such prisoner having been taken out of the jurisdiction of such city or borough into any other jurisdiction, or out of the county in which such city or borough may be situated into or through any other county or division of a county.

5. *Expenses of prisoners removed to county gaols to be calculated as provided by 5 & 6 Vict. c. 98.*] That the expenses which shall be incurred by such county in the maintenance, safe custody, and care of every prisoner so removed whilst in custody in such county gaol, shall be calculated upon the same principle and in the same manner as provided by an Act passed in the sixth year of the reign of Her present Majesty, intituled "An Act to amend the Laws concerning Prisons," with respect to borough prisoners committed to a county prison where no special contract is subsisting between such borough and county relative to such prisoners; and such expenses and all other expenses which may be incurred by such county in respect of every such prisoner, shall be paid by the council of such city or borough to the treasurer of such gaol or county; and the amount of all such expenses shall, in case of dispute, be settled by a barrister-at-law in the manner provided by the said Act.

6. *Account of expenses to be made out and signed by clerk to justices, and sent to town clerk of borough.*] That an account in writing of the expenses due and payable, or claimed to be due and payable, in respect of the maintenance, safe custody, and care of such prisoners as aforesaid, shall be made out from time to time, and signed by the clerk to the visiting justices of the county gaol to which such prisoners shall have been committed, and delivered to the town clerk of the city or borough within which the offences shall have been committed; and such account shall be conclusive against such city or borough, unless some objection shall be made in writing, and signed by the town clerk of such city or borough, and delivered to the clerk of the said visiting justices, within one calendar month next after such account shall have been delivered to such town clerk.

7. *In cases of conviction for offences committed within limits of any city, &c. court may commit offender to borough gaol.—In case of commitment of persons.*] That whenever any person shall be convicted at any assizes of any offence committed within the limits of any city or borough having or providing and maintaining at its own cost a gaol or house of correction, for which offence such person



shall be liable either to the punishment of transportation or imprisonment, it shall be lawful for the court, if it shall so think fit, to commit such person to such gaol or house of correction, in execution of his judgment; and in case of the commitment of any person either sentenced to transportation or pardoned for any capital offence on condition of transportation, all the powers, provisions, and authorities for the removal of offenders sentenced to transportation given or granted by any former Act or Acts of parliament to sheriffs or gaolers, shall be and the same are hereby extended and given to the gaoler or keeper of the gaol or house of correction in whose custody such offender shall be.

8. *Provisions as to removal before trial to apply to removal after conviction.*] That all the provisions hereinbefore contained with reference to the removal of prisoners from any city or borough gaol to the county gaol for trial at the assizes, shall be applicable and shall be applied to the removal from the county gaol to any city or borough gaol of any prisoner who, having been convicted at the assizes, shall be committed by the court to such gaol or house of correction, in execution of his judgment.

9. *Borough justices to have the same jurisdiction as county justices under any local Act as to offences committed within the borough.*] That after the passing of this Act the justices of every city or borough shall have the same jurisdiction with respect to all offences committed and matters arising within such city or borough as the justices of the county in which such city or borough is situate now have under or by virtue of any local or general Act of parliament; and such offences and matters shall be cognizable by one or more of the justices of such city or borough in the same manner as such offences and matters are now cognizable by one or more of the justices of such county: provided always, that in every case in which imprisonment may be awarded for or in respect of any such offences or matters aforesaid, or to enforce payment of any penalty, rate, sum of money, or costs imposed or made payable by or by virtue of any such general or local Act or otherwise, such imprisonment may be awarded to take place in any gaol or house of correction to which the justices of the said city or borough now have or hereafter may have power to commit offenders.

10. *Interpretation of terms.*] That throughout this Act, where there shall be nothing in the subject or context repugnant to such construction, words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number, and words importing the masculine gender only shall include females.

11. *Extent of Act.*] That this Act shall extend only to England and Wales.

12. *Act may be amended, &c.*] That this Act may be amended or repealed by any Act to be passed in this present session of parliament.

The reader will remark the words in the first section, "except murder."



## SECTION V.

## CONVICTIONS.

*By stat. 11 & 12 Vict. c. 43,—An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to Summary Convictions and Orders.*

Sect. 1. *Summons on information or complaint, how served.*] Whereas it would conduce much to the improvement of the administration of justice within England and Wales, so far as respects summary convictions, and orders to be made by Her Majesty's justices of the peace therein, if the several statutes and parts of statutes relating to the duties of such justices in respect of such summary convictions and orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by such positive enactment: and declares and enacts that "in all cases where an information shall be laid before one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice, or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons (A.) directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of the said summons: provided always, that nothing herein-mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*; provided also, that no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint,



or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

The reader will note that this section points out a distinction, preserved throughout the Act, between convictions and orders. A conviction is founded on an information which is in substance an application that punishment be inflicted; an order is founded on a complaint which is in substance an application that the party complained of be ordered to pay money or do some other thing. A summons is the first process; it may be issued by one justice only in every case, for the information may be laid or the complaint made before any one justice. It must be directed to the defendant; it may be served either personally upon the defendant, or by leaving it with some person for him at his last or most usual place of abode. The constable or other person who serves the summons, is required to attend before the justice to depose, if necessary, to the manner of the service.

No objection can be taken to the summons for any defect in form or substance, or for any variance between it and the evidence adduced.

(A.)

*Summons to the Defendant upon an Information or Complaint.*

To *A. B.* of —, labourer.

Whereas information hath this day been laid [*or complaint hath this day been made*] before the undersigned [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that you [*here state shortly the matter of the information or complaint*]: These are therefore to command you, in Her Majesty's name, to be and appear on —, at — o'clock in the forenoon at —, before such justices of the peace for the said county as may then be there, to answer to the said information [*or complaint*] and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

*J. S.* (L.S.)

2. *If summons be not obeyed, warrant; or warrant in the first instance; or if summons having been duly served, be not obeyed, the justices may proceed ex parte.*] That if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served what shall be deemed by such justice or justices to be a reasonable time before the time therein



appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant (B.) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C.) for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place, to answer to the said information, and to be further dealt with according to law; or if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon, as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

It is only in cases of informations for offences punishable on summary conviction that a warrant can be issued in the first instance; and in the case of an information the matter must be substantiated by oath or affirmation.

The power to proceed *ex parte* is raised by default of appearance upon the day and at the place appointed in and by the summons; by the first part of the section the justices are empowered to determine what is reasonable time of service before the time appointed for appearance, it follows, therefore, that in all cases the justices may proceed *ex parte* in proof of service of the summons if so they shall think fit, unless some statute passed after the 14th of August, 1848, restrain them.

(B.)

*Warrant where the Summons is disobeyed.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas on — last past information was laid [or complaint was



made] before the undersigned, [one] of Her Majesty's Justices of the peace in and for the said county of —, for that *A. B.* [*&c., as in the summons*]: And whereas I then issued my summons unto the said *A. B.*, commanding him, in Her Majesty's name, to be and appear on —, at — o'clock in the forenoon, at —, before such justices of the peace for the said county as might then be there to answer to the said information [*or complaint*], and to be further dealt with according to law: And whereas the said *A. B.* hath neglected to be or appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said *A. B.*: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before some one or more of Her Majesty's justices of the peace in and for the said county, to answer to the said information [*or complaint*], and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)

(C.)

*Warrant in the first Instance.*

To the constable of — and to all other peace officers in the said [*county*] of —.

Whereas information hath this day been laid before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that *A. B.* [*here state shortly the matter of the information*]; and oath being now made before me substantiating the matter of such information, these are therefore to command you, in Her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before some one or more of Her Majesty's justices of the peace in and for the said county, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)

3. *Form of warrant.—Where and how executed.—In what cases, and how backed.*] That every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last-mentioned county or district, and it shall state shortly the matter of the information or complaint



on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other person to whom it is directed to apprehend the said defendant and to bring him before one or more justice or justices of the peace (as the case may require) of the same county, riding, division, liberty, city, borough, or place, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough, or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet, or place situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer; and such of the provisions and enactments contained in a certain Act of parliament made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to Persons charged with Indictable Offences," as to the backing of any warrant, and the indorsement thereon by a justice of the peace or other officer, authorizing the person bringing such warrant, and all other persons to whom the same was originally directed, to execute the same within the jurisdiction of the justice or officer so making such indorsement, as are applicable to the provisions of this Act, shall extend to all such warrants, and to all warrants of commitment issued under and by virtue of this Act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this Act: provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this Act, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit,



to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a defendant shall be discharged upon recognizances as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

The warrant may be under hand and seal, and may be of one justice only. It may be directed to any person by name. Fresh pursuit may be extended to seven miles from the border of the county in which it began, without backed warrants. The provisions of the 11 & 12 Vict. c. 42, as to backing warrants (ss. 11, 12, 13, 14, 15,) apply as if they were repeated and made parts of this Act.

## (D.)

*Warrant of Committal for safe Custody during an Adjournment of the Hearing.*

To *W. T.*, constable of —, and to the keeper of the [*house of correction*] at —.

Whereas on — last past information was laid [*or complaint was made*] before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that [*&c., as in the summons*]: And whereas the hearing of the same is adjourned to the — day of — instant, at — o'clock in the forenoon at —, and it is necessary that the said *A. B.* should in the meantime be kept in safe custody: These are therefore to command you the said constable, in Her Majesty's name, forthwith to convey the said *A. B.* to the [*house of correction*] at —, and there deliver him into the custody of the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said *A. B.* into your custody in the said house of correction, and there safely keep him until the — day of — instant, when you are hereby required to convey and have him the said *A. B.*, at the time and place to which the said hearing is so adjourned as aforesaid, before such justices of the peace for the said [*county*] as may then be there, to answer further to the said information [*or complaint*] and to be further dealt with according to law.



Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.

J. S. (L.S.)

(E.)

*Recognizance for the Appearance of the Defendant where the Case is adjourned, or not at once proceeded with.*

Be it remembered, that on —, *A. B.* of —, labourer, and *L. M.* of —, grocer, personally came before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of —, and severally acknowledged themselves to owe to our sovereign lady the Queen the several sums following; (that is to say,) the said *A. B.* the sum of —, and the said *L. M.* the sum of —, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said *A. B.* shall fail in the condition indorsed.

Taken and acknowledged, the day and }  
year first above mentioned, at —, be- }  
fore me, J. S. }

The condition of the within-written recognizance is such, that if the said *A. B.* shall personally appear on the — day of — instant at — o'clock in the forenoon at —, before such justices of the peace for the said [county] as may then be there, to answer further to the information [or complaint] of *C. D.* exhibited against the said *A. B.*, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

*Notice of such Recognizance to be given to the Defendant and his Surety.*

Take notice, that you *A. B.* are bound in the sum of —, and you *L. M.* in the sum of —, that you *A. B.* appear personally on —, at — o'clock in the forenoon at —, before such justices of the peace for the said county as shall then be there, to answer further to a certain information [or complaint] of *C. D.*, the further hearing of which was adjourned to the said time and place, and unless you appear accordingly the recognizance entered into by you *A. B.*, and by *L. M.* as your surety, will forthwith be levied on you and him.

Dated this — day of —, 185 .

J. S.

(F.)

*Certificate of Non-appearance to be indorsed on the Defendant's Recognizance.*

I hereby certify, that the said *A. B.* hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J. S.



*Indorsement in backing a Warrant.*

——— } Whereas proof upon oath hath this day been made before  
to wit. { me, one of Her Majesty's justices of the peace for the said  
[*county*] of ———, that the name of *J. S.* to the within warrant sub-  
scribed, is of the hand-writing of the justice of the peace within  
mentioned; I do therefore hereby authorize *W. T.*, who bringeth to  
me this warrant, and all other persons to whom this warrant was  
originally directed, or by whom it may lawfully be executed, and also  
all constables and other peace officers of the said [*county*] of ———,  
to execute the same within the said last mentioned [*county*].

Given under my hand this ——— day of ——— 185 .

*J. L.*

4. *Description of the property of partners, &c.—Of the property of counties; of the property in goods provided for the poor; of the property in materials for parish roads; of the property in materials for turnpike roads, &c.; of the property of commissioners of sewers.]* That in any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be, and whenever in any information or complaint, or the proceedings thereon, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any county, riding, division, liberty, city, borough, or place, or of any materials for the making, altering, or repairing of the same, they may be therein described as the property of the inhabitants of such county, riding, division, liberty, city, borough, or place respectively; and all goods provided by parish officers for the use of the poor, may in any such information or complaint, or the proceedings thereon, be described as the goods of the churchwardens and overseers of the poor of the parish, or of the overseers of the poor of the township or hamlet, or of the guardians of the poor of the union to which the same belong, without naming any of them; and all materials and tools provided for the repair of highways at the expense of parishes, or other districts in which such highways may be situate, may be therein described as the property of the surveyor or surveyors of such highways respectively, without naming him or them; and all materials or tools provided for making or repairing any turnpike road, and buildings, gates, lamps, boards, stones, posts, fences, or other things erected or provided for the purpose of any such turnpike road, may be described as the property of the commissioners or trustees of such turnpike road, without naming them; and all property of the commissioners of sewers of any district may be



described as the property of such commissioners, without naming them.

5. *Prosecution and punishment of aiders and abettors, &c.]* That every person who shall aid, abet, counsel, or procure the commission of any offence which is hereafter or shall be punishable on summary conviction shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough, or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, or counselling, or procuring may have been committed.

It must be borne in mind that proof must be given that the principal offence was committed.

6. *Provisions of 11 & 12 Vict. c. 42, as to justices in one county, &c. acting for another, to extend to this Act.]* That such of the provisions and enactments in the Act aforesaid made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences," whereby a justice of the peace for one county, riding, division, liberty, city, borough, or place may act for the same whilst residing or being in an adjoining county, riding, division, liberty, city, borough, or place of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division, or liberty may act as such within any city, town, or precinct next adjoining thereto or surrounded thereby, being a county of itself or otherwise having exclusive jurisdiction, as are applicable to the provisions of this Act, shall be deemed to be incorporated into this Act, and to extend to all acts required of or to be performed by justices of the peace under or by virtue of this Act, in as full and ample a manner as if the said provisions and enactments were here repeated and made parts of this Act.

The sixth section of the 11 & 12 Vict. c. 42, includes and goes further than this enactment.

7. *Summons to witness to attend and give evidence; if summons be not obeyed, warrant; then in what cases warrant in the first instance.—Persons appearing on summons, &c., refusing to be examined, may be committed.]* That if it shall be made to appear to any justice of the peace by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons (G. 1) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what



he shall know concerning the matter of the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf) it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (G. 2) under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (G. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (G. 4) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

This section applies when the witness resides or is, and the examination is to be, within the jurisdiction of the justices.

(G. 1.)

*Summons of a Witness.*

*E. F.* of —, in the said [county] of —.

Whereas information was laid [or complaint was made] before the undersigned [one] of Her Majesty's justices of the peace in and for the said [county] of —, for that [*&c., as in the summons*]; and it hath been made to appear to me upon [oath] that you are likely to give material evidence on behalf of the [prosecutor, or complainant, or defendant] in this behalf: these are therefore to require you to be



and appear on —, at — o'clock in the forenoon at —, before such justices of the peace for the said county as may then be there, to testify what you shall know concerning the matter of the said information [*or complaint*].

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L. S.)

(G. 2.)

*Warrant where a Witness has not obeyed a Summons.*

To the constable of —, and to all other peace officers in the said [*county*] of —.

Whereas information was laid [*or complaint was made*] before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that, [*&c., as in the summons*]; and it having been made to appear to me upon oath that *E. F.* of —, in the said county, *labourer*, was likely to give material evidence on behalf of the [*prosecutor*], I did duly issue my summons to the said *E. F.*, requiring him to be and appear on —, at — o'clock in the forenoon of the same day at —, before such justices of the peace for the said county as might then be there, to testify what he should know concerning the said *A. B.*, or the matter of the said information [*or complaint*]; and whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said *E. F.*, and of a reasonable sum having been paid [*or tendered*] to him for his costs and expenses in that behalf: and whereas the said *E. F.* hath neglected to appear at the time and place appointed by the said summons, and no just excuse hath been offered for such neglect: these are therefore to command you to take the said *E. F.*, and to bring and have him on —, at — o'clock in the forenoon at —, before such justices of the peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [*or complaint*].

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [*county*] aforesaid.

J. S. (L. S.)

(G. 3.)

*Warrant for a Witness in the first Instance.*

To the constable of —, and to all other peace officers in the [*county*] of —.

Whereas information was laid [*or complaint was made*] before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that [*&c., as in the summons*]; and it being made to appear before me upon oath that *E. F.* of —, [*labourer*] is likely to give material evidence on behalf of the [*prosecutor*] in this matter, and it is probable that the said *E. F.* will not attend to give evidence without being compelled so to do; these are therefore to command you to bring and have the said *E. F.*



before me on —, at — o'clock in the forenoon, at —, or before such other justices of the peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [*or complaint*].

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L. S.)

(G. 4.)

*Commitment of a Witness for refusing to be sworn or to give Evidence.*

To *W. T.*, constable of —, in the said [*county*] of —, and to the keeper of the [*house of correction*] at —.

Whereas information was laid [*or complaint was made*] before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*] of —, for that [*&c., as in the summons*]; and one *E. F.* now appearing before me such justice as aforesaid on —, at —, and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do [*or being now here duly sworn as a witness in the matter of the said information or complaint, doth refuse to answer certain questions concerning the premises which are now here put to him*], without offering any just excuse for such his refusal: these are therefore to command you the said constable to take the said *E. F.*, and him safely convey to the [*house of correction*] at — aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [*house of correction*] to receive the said *E. F.* into your custody in the said [*house of correction*], and there imprison him for such his contempt for the space of — days, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L. S.)

8. *Complaints for an order need not be in writing.*] That in all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise, it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular Act of parliament upon which such complaint shall be framed.

9. *Proceedings upon informations for offences punishable on summary convictions.*] Declares and enacts, that in all cases of informations for any offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act shall be alleged to have been committed shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any



variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or justices present and acting at the hearing to be such that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) (a) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.) (b), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) (c) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

*Form of an Information for an Offence punishable on Conviction.*

——— } Be it remembered that on the —— day of ——, in the  
to wit. } year of our Lord one thousand eight hundred and fifty —,  
at —— in the said [county], J. N. of ——, labourer, personally  
cometh before me, the undersigned, one of Her Majesty's justices of  
the peace in and for the said [county], and informeth me that A. B.,  
late of the parish of —— in the said county, labourer, within the  
space of [six calendar months," or whatever time is limited by statute]  
"last past, to wit, on ——, at —— [here state the facts and circum-  
stances of the offence as defined by the statute creating it\*]; con-  
trary to the form of the statute in such case made and provided:  
wherefore the said J. N. prayeth the consideration of me the said  
justice in the premises, and that the said A. B. may be summoned to  
appear before me, and answer the premises, and make his defence  
thereto.

(a) See this form, *ante*, p. 192.

(c) See this form, *ante*, p. 193.

(b) See this form, *ante*, p. 193.

\* As to the form of stating the offence here, see the first two volumes of Archbold's Justice of the Peace, under the proper heads.



*The like, Qui tam.*

——— } Be it remembered that on the —— day of ——, in the  
 to wit. } year of our Lord one thousand eight hundred and fifty —,  
 at ——, in the said [county], J. N. of ——, labourer, who as well for  
 our sovereign lady the Queen [or for the poor of the parish of ——,  
 in the said county, or as the statute may be,] as for himself doth  
 prosecute in this behalf, personally cometh before me, the undersigned,  
 one of Her Majesty's justices of the peace in and for the said  
 [county], and as well for our said lady the Queen [or the poor of the  
 said parish] as for himself, informeth me that A. B., late of the  
 parish of —— in the said [county], labourer, within the space of [six  
 calendar months," or whatever time is limited by statute], "last past,  
 to wit, on ——, at —— [here state the facts and circumstances of  
 the offence, as defined by the statute creating it\*], contrary to the  
 form of the statute in such case made and provided, whereby and by  
 force of the statute in such case made and provided, the said A. B.  
 hath forfeited for his said offence the sum of ——. Wherefore the  
 said J. N., who sueth as aforesaid, prayeth the consideration of me  
 the said justice in the premises, and that the said A. B. may be con-  
 victed of the offence aforesaid, and that one moiety of the said for-  
 feiture may be adjudged to [our said lady the Queen], and the other  
 moiety thereof to the said J. N. according to the form of the statute  
 in such case made and provided; and that the said A. B. may be  
 summoned to appear before me and answer the premises, and make  
 his defence thereto.

10. *Complaint or information, how made or laid.*] Declares and enacts, that every such complaint upon which a justice or justices of the peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular Act of parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof; except in cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance, to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf.

11. *Time limited for such complaint or information.*] That in all cases where no time is already or shall hereafter be specially limited

\* As to the form of stating the offence here, see the first two volumes of Archbold's Justice of the Peace, under the proper heads.



for making any such complaint or laying any such information in the Act or Acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

12. *Hearing, by whom and how.—Place of hearing a public court.—Parties allowed counsel or attorney.*] That every such complaint and information shall be heard, tried, determined, and adjudged by one or two or more justice or justices of the peace, as shall be directed by the Act of parliament upon which such complaint or information shall be framed, or such other Act or Acts of parliament as there may be in that behalf; and if there be no such direction in any such Act of parliament, then such complaint or information may be heard, tried, determined, and adjudged by any one justice of the peace for the county, riding, division, liberty, city, borough, or place where the matter of such information shall have arisen: and the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them; and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

This section provides for a trial of the party complained against, and the place of trial is therefore declared to be a public court. The corresponding section, the 19th of the 11 & 12 Vict. c. 42, provided for a preliminary inquiry, and therefore the place of such inquiry was expressly declared not to be an open court for that purpose.

13. *Appearance or default of the defendant.—Default after service of the summons.—Appearance.*] That if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information the defendant against whom the same shall have been made or laid shall not appear when called, the constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of any justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended; and when such defendant shall afterwards be apprehended under such warrant he shall be brought before the same justice or justices, or some other justice or justices of the same county, riding, division, liberty, city, borough, or place, who shall thereupon either by his or their warrant (H.), commit such defendant to the house of correction or other prison, lock-up house, or place of security, or, if he or they think fit, verbally



to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice; or if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid, do not appear, by himself, his counsel, or attorney, the said justice or justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit, in which case such justice or justices may commit (D.) (a) the defendant in the meantime to the house of correction or other prison, lock-up house, or place of security, or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into a recognizance (E.) (b) with or without surety or sureties, at the discretion of such justice or justices conditioned for his appearance at the time and place to which such hearing shall be so adjourned; and if such defendant shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) (c) on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant; but if both parties appear, either personally or by their respective counsel or attornies, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

The appearance by counsel or attorney will not absolve the defendant from the duty of attending in obedience to the summons, if the justices should require his personal attendance.

### (H.)

#### *Warrant to remand a Defendant when apprehended.*

To *W. T.*, constable of —, and to the keeper of the [*house of correction*] at —.

Whereas information was laid [*or complaint was made*] before the undersigned, [*one*] of Her Majesty's justices of the peace in and for

(a) See this form, *ante*, p. 192.

(b) See this form, *ante*, p. 193.

(c) See this form, *ante*, p. 193.



the said [county] of —, for that [*&c., as in the summons or warrant*]: and whereas the said *A. B.* hath been apprehended under and by virtue of a warrant upon such information [*or complaint*], and is now brought before me as such justice aforesaid; these are therefore to command you the said constable, in Her Majesty's name, forthwith to convey the said *A. B.* to the [*house of correction*] at —, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper to receive the said *A. B.* into your custody in the said [*house of correction*], and there safely keep him until — next, the — day of — instant, when you are hereby commanded to convey and have him at —, at — o'clock in the forenoon of the same day, before such justices of the peace for the said [county] as may then be there, to answer to the said information [*or complaint*], and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L. S.)

14. *Proceedings on the hearing of complaints and informations.—* *Proviso.*] That where such defendant shall be present at such hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be, and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine and such other evidence as he may adduce in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (I. 1—3) or order (K. 1—3) shall after-



wards be drawn up by the said justice or justices in proper form, under his or their hand and seal or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same (L.) and shall give the defendant in that behalf a certificate thereof (M.), which said certificate afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively against the same party: provided always, that if the information or complaint in any such case shall negative any exemption, exception, proviso, or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

It is not necessary, in the case of an order, that the order itself should be drawn up, before the justice issues his warrant of distress; it is sufficient if the minute be made and served; the order may be drawn up afterwards (a).

This section takes away the title to reply upon evidence generally; but the magistrates may permit a reply if they should think that it will serve the ends of justice.

### (I. 1.)

#### *Conviction for a Penalty to be levied by Distress, and in Default of sufficient Distress, Imprisonment.*

——— } Be it remembered, that on the —— day of ——, in  
to wit. } the year of our Lord ——, at ——, in the said [county],  
*A. B.* is convicted before the undersigned, [one] of Her Majesty's justices of the peace for the said county, for that [he the said *A. B.*, &c., stating the offence, and the time and place when and where committed]; and I adjudge the said *A. B.* for his said offence to forfeit and pay the sum of ——, [stating the penalty, and also the compensation, if any,] to be paid and applied according to law, and also to pay to the said *C. D.* the sum of ——, for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before—— next]\* I order that the same be levied by distress and sale of the goods and chattels of the said *A. B.*, and in default of sufficient distress \* I adjudge the said *A. B.* to be imprisoned in the [house of correction] at —— in the said county [there to be kept to hard labour] for the space of ——, unless the said several sums, and all costs and charges of the said distress, [and of the commitment and conveying of the said *A. B.* to the said house of correction] shall be sooner paid.

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(a) *Ratt v. Parkinson et al.*, 20 Law J. 208, m.



Given under my hand and seal, the day and year first above mentioned, at — in the [county] aforesaid. J. S. (L. S.)

\* Or, where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks \*\*, say, "then inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c., as above to the end.

## (I. 2.)

*Conviction for a Penalty, and in Default of Payment  
Imprisonment.*

—— } Be it remembered, that on the —— day of ——, in the  
to wit. } year of our Lord ——, at ——, in the said [county]  
A. B. is convicted before the undersigned, [one] of Her Majesty's justices of the peace for the said county, for that [he the said A. B., &c., stating the offence, and the time and place when and where it was committed]; and I adjudge the said A. B. for his said offence to forfeit and pay the sum of ——, [stating the penalty and the compensation, if any], to be paid and applied according to law, and also to pay to the said C. D. the sum of ——, for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before —— next] I adjudge the said A. B. to be imprisoned in the [house of correction] at ——, in the said [county], [and there to be kept to hard labour] for the space of ——, unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction,] shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at ——, in the [county] aforesaid. J. S. (L. S.)

## (I. 3.)

*Conviction when the punishment is by Imprisonment, &c.*

—— } Be it remembered, that on the —— day of ——, in the  
to wit. } year of our Lord ——, in the said [county], A. B. is convicted before the undersigned, [one] of Her Majesty's justices of the peace for the said county, for that [he the said A. B., &c., stating the offence, and the time and place when and where committed]; and I adjudge the said A. B. for his said offence to be imprisoned in the [house of correction] at ——, in the said [county] [and there kept to hard labour] for the space of ——, and I also adjudge the said A. B. to pay the said C. D. the sum of ——, for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before —— next] then\* I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf\* I adjudge the said A. B. to be imprisoned in the said house of correction [and there kept to



*hard labour*] for the space of —, to commence at and from the termination of his imprisonment as aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal the day and year first above mentioned, at —, in the county aforesaid. J. S. (L.S.)

\* *Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks \* \*, say, "inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress], I adjudge," &c.*

(K. 1.)

*Order for Payment of Money to be levied by Distress, and in default of Distress, Imprisonment.*

—— } Be it remembered, that on——, complaint was made  
to wit. } before the undersigned, [one] of Her Majesty's justices  
of the peace in and for the said [county] of —, for that [stating  
the facts entitling the complainant to the order, with the time and  
place when and where they occurred]; and now, at this day to wit,  
on —, at —, the parties aforesaid appear before me the said  
justice [or the said C. D. appears before me the said justice, but the  
said A. B., although duly called, does not appear by himself, his  
counsel or attorney, and it is now satisfactorily proved to me on oath  
that the said A. B. has been duly served with the summons in this  
behalf which required him to be and appear here at this day before  
such justices of the peace for the said county as should now be here,  
to answer the said complaint, and to be further dealt with according  
to law]; and now, having heard the matter of the said complaint,  
I do adjudge the said A. B. [to pay to the said C. D. the sum  
of —, forthwith, or on or before — next, or as the statute may  
require], and also to pay to the said C. D. the sum of —, for his  
costs in this behalf; and if the said several sums be not paid forth-  
with [or on or before — next] \* I hereby order that the same be  
levied by distress and sale of the goods and chattels of the said  
A. B.; and in default of sufficient distress in that behalf\* I adjudge  
the said A. B. to be imprisoned in the [house of correction] at —,  
in the said [county], [and there kept to hard labour] for the space  
of —, unless the said several sums, and all costs and charges of  
the said distress [and of the commitment and the conveying of the  
said A. B. to the house of correction], shall be sooner paid.

Given under my hand and seal, this — day of —, in the year  
of our Lord —, in the [county] aforesaid.

J. S. (L.S.)

\* *Or, where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods*



whereon to levy a distress, then, instead of the words between the asterisks, \* \* say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said *A. B.* and his family," or "that the said *A. B.* hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c.

## (K. 2.)

*Order for Payment of Money, and in default of Payment,  
Imprisonment.*

——— } Be it remembered, that on ——, complaint was made  
to wit. } before the undersigned, [one] of Her Majesty's justices  
of the peace in and for the said [county] of ——, for that [stating  
the facts entitling the complainant to the order, with the time and  
place when and where they occurred]; and now at this day, to wit,  
on ——, at ——, the parties aforesaid appear before me the said  
justice [or the said *C. D.* appears before me the said justice, but the  
said *A. B.*, although duly called, does not appear by himself, his  
counsel or attorney, and it is now satisfactorily proved to me on oath  
that the said *A. B.* has been duly served with the summons in this  
behalf which required him to be and appear here on this day before  
such justices of the peace for the said county as should now be here,  
to answer the said complaint, and to be further dealt with according  
to law]; and now having heard the matter of the said complaint, I  
do adjudge the said *A. B.* [to pay to the said *C. D.* the sum of ——  
forthwith, or on or before —— next, or as the statute may require],  
and also to pay to the said *C. D.* the sum of ——, for his costs in this  
behalf; and if the said several sums be not paid forthwith [or on or  
before —— next, I adjudge the said *A. B.* to be imprisoned in the  
[house of correction] at ——, in the said county [there to be kept to  
hard labour] for the space of ——, unless the said several sums [and  
the costs and charges of conveying the said *A. B.* to the said house of  
correction] shall be sooner paid.

Given under my hand and seal, this —— day of ——, in the year  
of our Lord ——, at ——, in the [county] aforesaid,

J. S. (L.S.)

## (K. 3.)

*Order for any other Matter where the disobeying of it is punishable  
with Imprisonment.*

——— } Be it remembered, that on ——, complaint was made  
to wit. } before the undersigned, [one] of Her Majesty's justices  
of the peace in and for the said [county] of ——, for that [stating  
the facts entitling the complainant to the order, with the time and  
place when and where they occurred], and now at this day, to wit,  
on ——, at ——, the parties aforesaid appear before me, the said  
justice, [or the said *C. D.* appears before me the said justice, but  
the said *A. B.*, although duly called, doth not appear by himself,



his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said *A. B.* has been duly served with the summons in this behalf, which required him to be and appear here at this day, before such justices of the peace for the said county as should now be here, to answer to the said complaint, and to be further dealt with according to law], and now, having heard the matter of the said complaint, I do therefore adjudge the said *A. B.* to [*here state the matter required to be done*], and if upon a copy of a minute of this order being served upon the said *A. B.*, either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said *A. B.* for such his disobedience to be imprisoned in the [*house of correction*] at——, in the said county [*there to be kept to hard labour*] for the space of ——, [unless the said order be sooner obeyed, *if the statute authorize this*]; and I do also adjudge the said *A. B.* to pay to the said *C. D.* the sum of ——, for his costs in this behalf; and if the said sum for costs be not paid forthwith [*or on or before —— next*], I order the same to be levied by distress and sale of the goods and chattels of the said *A. B.*, [and in default of sufficient distress in that behalf, I adjudge the said *A. B.* to be imprisoned in the said *house of correction* [*and there kept to hard labour*] for the space of ——, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid].

Given under my hand and seal, this —— day of ——, in the year of our Lord ——, at ——, in the [*county*] aforesaid.

J. S. (L.S.)

(L.)

*Order of Dismissal of an Information or Complaint.*

——— } Be it remembered, that on ——, information was laid  
to wit. } [*or complaint was made*] before the undersigned, [*one*]  
of Her Majesty's justices of the peace in and for the said [*county*]  
of ——, for that, [*&c., as in the summons to the defendant*], and now  
at this day, to wit, on ——, at ——, both the said parties appear  
before me in order that I should hear and determine the said informa-  
tion [*or complaint,*] [*or the said A. B. appeareth before me, but the*  
said *C. D.*, although duly called, doth not appear]: whereupon the  
matter of the said information [*or complaint*] being by me duly  
considered, [it manifestly appears to me that the said information  
[*or complaint*] is not proved, and\*] I do therefore dismiss the same,  
[and do adjudge that the said *C. D.* do pay to the said *A. B.* the  
sum of ——, for his costs incurred by him in his defence in this  
behalf; and if the said sum for costs be not paid forthwith (*or on*  
*or before ——*), I order that the same be levied by distress and sale  
of the goods and chattels of the said *C. D.*, and in default of sufficient  
distress in that behalf I adjudge the said *C. D.* to be imprisoned in  
the (*house of correction*) at ——, in the said county (*and there kept*  
*to hard labour*) for the space of ——, unless the said sum for costs,  
and all costs and charges of the said distress (*and of the commitment*



and conveying of the said C. D. to the said house of correction), shall be sooner paid.]

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid,

J. S. (L.S.)

\* If the informant or complainant do not appear, these words may be omitted.

(M.)

*Certificate of Dismissal.*

I hereby certify that an information [or complaint] preferred by C. D. against A. B., for that [*&c., as in the summons*], was this day considered by me, one of Her Majesty's justices of the peace in and for the [county] of —, and was by me dismissed [*with costs*].

Dated this — day of —, 18—.

J. S.

15. *Prosecutors and complainants in certain cases to be deemed competent witnesses, and examined upon oath, &c.*] That every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, and the justice or justices before whom any such witness shall appear for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath or affirmation.

16. *Adjournment of the hearing, in what cases, and how.*] That before or during such hearing of any such information or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attornies or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may commit (D.) him to the common gaol or house of correction, or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned: and if at the time or place to which such hearing or further hearing shall be so adjourned either or both of the parties shall not appear personally, or by his or their counsel or attornies respectively, before the said justice or justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then and there present to proceed to such



hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said justice or justices may dismiss such information or complaint, with or without costs, as to such justices shall seem fit; provided always, that in all cases where a defendant shall be discharged on recognizance as aforesaid, and shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice or justices who shall have taken the said recognizance, or any other justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant (a).

17. *Form of convictions and orders.*] That in all cases of conviction where no particular form of such conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction have been therein given or not, it shall be lawful for the justice or justices who shall so convict to draw up his or their conviction on parchment or on paper in such one of the forms of conviction (I. 1—3) in the schedule to this Act contained as shall be applicable to such case, or to the like effect; and where an order shall be made, and no particular form of order is or shall be given by the statute giving authority to make such orders, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by whom such order is to be made to draw up the same in such one of the forms of orders (K. 1—3) in the schedule to this Act contained as may be applicable to such case or to the like effect; and in all cases where by any Act of parliament authority is given to commit a person to prison or to levy any sum upon his goods or chattels by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress (b).

18. *Costs.*] That in all cases of summary conviction or of orders made by a justice or justices of the peace, it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; and in cases where such justice or justices, instead of

(a) See form D. *ante*, p. 192; form E. *ante*, p. 193; form F. *ante*, p. 193.

(b) See forms I. 1—3, *ante*, pp. 204, 205; forms K. 1—3, *ante*, pp. 206, 207.



convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal, to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless such costs shall be sooner paid (c).

19. *Warrant of distress.*] That where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order, such penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of distress (N. 1, 2) for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement (N. 3) on such warrant, signed with his hand, authorizing the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place: provided always that whenever it shall appear to any justice of the peace to whom application shall be made for any such warrant of distress as aforesaid that the issuing thereof would be ruinous to the defendant and his family, or wherever it shall appear to such justice, by the confession of the defendant or otherwise, that

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(c) See *R. v. Barton*, 18 Law J. 56, m.



he hath no goods or chattels whereon to levy such distress, then and in every such case it shall be lawful for such justice, if he shall deem it fit, instead of issuing such warrant of distress, to commit such defendant to the house of correction, or if there be no house of correction within his jurisdiction, then to the common gaol, there to be imprisoned, with or without hard labour, for such time and in such manner as by law such defendant might be so committed in case such warrant of distress had issued, and no goods or chattels could be found whereon to levy such penalty or sum and costs aforesaid.

(N. 1.)

*Warrant of Distress upon a Conviction for a Penalty.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas *A. B.*, late of —, [*labourer*], was on this day [*or on — last past*] duly convicted before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said county of —, for that [*stating the offence as in the conviction*], and it was thereby adjudged that the said *A. B.* should for such his offence forfeit and pay [*&c., as in the conviction*], and should also pay to the said *C. D.* the sum of — for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid [*forthwith*] the same should be levied by distress and sale of the goods and chattels of the said *A. B.*; and it was thereby also adjudged that in default of sufficient distress the said *A. B.* should be imprisoned in the [*house of correction*] at — in the said county [*and there kept to hard labour*] for the space of —, unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said *A. B.* to the said [*house of correction*] should be sooner paid: And whereas the said *A. B.* being so convicted as aforesaid, and being [*now*] required to pay the said sums of — and —, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*; and if within the space of — days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising by such sale unto —, the clerk of the justices of the peace for the division of —, in the said [county], that he may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said *A. B.*; and if no such distress can be found, then that you certify the same unto me, to the end that such further proceedings may be had thereon as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L.S.)



## (N. 2.)

*Warrant of Distress upon an Order for the Payment of Money.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas on — last past a complaint was made before the undersigned, [one] of Her Majesty's justices of the peace in and for the said county of —, for that [*&c., as in the order*], and afterwards, to wit, on —, at —, the said parties appeared before me [*or as in the order*], and thereupon having considered the matter of the said complaint, I adjudged the said *A. B.* to [*pay to the said C. D. the sum of — on or before the — then next*], and also to pay to the said *C. D.* the sum of — for his costs in that behalf; and I thereby ordered that if the said several sums should not be paid on or before the said — then next, the same should be levied by distress and sale of the goods and chattels of the said *A. B.*; and it was adjudged that in default of sufficient distress in that behalf, the said *A. B.* should be imprisoned in the [*house of correction*] at —, in the said county [*and there kept to hard labour*] for the space of —, unless the said several sums, and all costs and charges of the distress, [*and of the commitment and conveying of the said A. B. to the said house of correction*], should be sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of — and — hath elapsed, but the said *C. D.* hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*; and if within the space of — days after the making of such distress, the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto —, the clerk of the justices of the peace for the division of — in the said [county] that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said *A. B.*; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L.S.)

## (N. 3.)

*Indorsement in backing a Warrant of Distress.*

— } Whereas proof upon oath hath this day been made  
to wit. } before me, one of Her Majesty's justices of the peace in  
and for the said county of —, that the name of *J. S.* to the within  
warrant subscribed is of the handwriting of the justice of the peace  
within mentioned; I do therefore authorize *W. T.*, who bringeth to  
me this warrant, and all other persons to whom this warrant was



originally directed, or by whom the same may be lawfully executed, and also all constables and other peace officers of the said [county] of —, to execute the same within the said county of —.

Given under my hand this — day of — 185 .

J. B.

20. *Commitment or security, until return made.*] That in all cases where a justice of the peace shall issue any such warrant of distress it shall be lawful for him to suffer the defendant to go at large, or verbally or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, riding, division, liberty, city, borough, or place as may then be there; provided always, that in all cases where a defendant shall give security by recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) (a) on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

21. *In default of distress, commitment.*] That if at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return (N. 4) that he could find no goods or chattels or no sufficient goods or chattels, whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant of commitment (N. 5) under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough, or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant

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(a) See this form, *ante*, p. 193.



to prison, if such justice shall think fit so to order (the amount thereof being ascertained and stated in such commitment) shall be sooner paid.

(N. 4.)

*Constable's Return to a Warrant of Distress.*

I, *W. T.*, constable of —, in the [county] of —, do hereby certify to *J. S.*, esquire, one of Her Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned *A. B.* and that I can find no sufficient goods or chattels of the said *A. B.* whereon to levy the sums within-mentioned.

Witness my hand this — day of —, 18—.

*W. T.*

(N. 5.)

*Warrant of Commitment for want of Distress.*

To the constable of — and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas [*&c.*, as in either of the foregoing distress warrants, N. 1, 2, to the asterisk (\*), and then thus]: And whereas afterwards, on the — day of —, in the year aforesaid, I, the said justice, issued a warrant to the constable of —, commanding him to levy the said sums of — and —, by distress and sale of the goods and chattels of the said *A. B.*: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said *A. B.*, but that no sufficient distress whereon to levy the sums above mentioned could be found: These are therefore to command you the said constable of — to take the said *A. B.*, and him safely to convey to the [house of correction] at — aforesaid, and there deliver him to the said keeper, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him [*and keep him to hard labour*] for the space of —, unless the said several sums, and all the costs and charges of the said distress [*and of the commitment and conveying of the said A. B. to the said house of correction*], amounting to the further sum of —, shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L. S.)

Where the conviction contained no adjudication for costs, but the warrant of distress recited it as if it did, and the defendant's goods were distrained for both debt and costs, this was holden to be bad, and to be the subject of an action of trespass (a).

22. *Where the statute provides no remedy in default of distress, justice may commit defendant.*] Recites that by some Acts of par-

(a) *Leary v. Pattrick et al.*, 19 Law J. 211, m.



liament justices of the peace are authorized to issue warrants of distress to levy penalties or other sums recovered before them by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; and enacts that in all such cases, and in all cases of convictions or orders where the statute on which the same are respectively founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment) shall be sooner paid. And by stat. 21 & 22 Vict. c. 73, s. 5, this shall extend and be deemed to have extended to all cases in which it is returned to a warrant of distress issued under the authority of such Act for levying any penalty, compensation, or sum of money adjudged or ordered to be paid by any conviction or order that no sufficient goods of the party against whom such warrant was issued can be found, where the statute on which the conviction or order is founded provides no mode of raising or levying such penalty, compensation or sum of money, or of enforcing payment of the same, as well as to cases where the statute on which the conviction or order is founded authorizes the issuing thereon of a warrant of distress.

23. *Commitment in the first instance for non-payment of a penalty or of a sum ordered to be paid.*] That in all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned and kept to hard labour, for a certain time, unless such penalty, compensation, or sum shall be sooner paid, in every such case such penalty, compensation, or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded forthwith or at the time specified in such conviction or order for the payment of the same, it shall be lawful for the justice or justices making such conviction or order, or for any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment (O. 1, 2) under his or their hand and seal, or hands and seals, requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the county, riding, division, liberty, city, borough, or place aforesaid, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or



gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

Where the warrant mentions no day for the commencement of the imprisonment, it begins to run from the time of the defendant being taken into custody under it (a).

## (O. 1.)

*Warrant of Commitment upon a Conviction for a Penalty in the first Instance.*

To the constable of — and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas *A. B.*, late of —, [labourer] was on this day duly convicted before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county], for that [stating the offence as in the conviction]; and it was thereby adjudged that the said *A. B.*, for his said offence should forfeit and pay the sum of —, [&c., as in the conviction], and should pay to the said *C. D.* the sum of — for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid [forthwith], the said *A. B.* should be imprisoned in the [house of correction] at —, in the said [county] [and there kept to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying the said *A. B.* to the said house of correction] should be sooner paid: And whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but as the said *A. B.* hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you the said constable of — to take the said *A. B.* and him safely to convey to the [house of correction] at — aforesaid, and there deliver him to the keeper thereof, together with this precept: and I do hereby command you the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying him to the said house of correction amounting to the further sum of —] shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L. S.)

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(a) *Braham v. Joyce*, 19 Law J. 24, m.



## (O. 2.)

*Warrant of Commitment on an order in the first Instance.*

—: To the constable of —, and to the keeper of the [*house of correction*] at —, in the said [*county*] of —.

Whereas on — last past complaint was made before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said county of —, for that [*&c., as in the order*], and afterwards, to wit, on — at — the parties appeared before [*me*] the said justice, [*or as it may be in the order*], and thereupon having considered the matter of the said complaint I adjudged the said *A. B.* to pay to the said *C. D.* the sum of — on or before the — day of — then next, and also to pay to the said *C. D.* the sum of — for his costs on that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the — day of — then next, the said *A. B.* should be imprisoned in the *house of correction* at — in the said county [*and there kept to hard labour*] for the space of —, unless the said several sums [*and the costs and charges of conveying the said A. B. to the said house of correction*] should be sooner paid: and whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said *A. B.* hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you the said constable of — to take the said *A. B.* and him safely convey to the said *house of correction* at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [*house of correction*] to receive the said *A. B.* into your custody in the said [*house of correction*], there to imprison him [*and keep him to hard labour*] for the space of — unless the said several sums [*and the cost and charges of conveying him to the said house of correction amounting to the further sum of —,*] shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [*county*] aforesaid.

J. S. (L.S.)

24. *Commitment where the conviction is not for a penalty, nor the order for payment of money, and the punishment is by imprisonment, &c.—Costs, how recovered.*] That where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making



such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment (P. 1, 2) under his or their hand and seal or hands and seals, and requiring the constable or constables to whom the same shall be directed, to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough, or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress (P. 3, 4) in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed (P. 5) to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

If a conviction or order such as is mentioned in this section contain an award of costs to the prosecutor or claimant, such part of the conviction or order must be executed separately.

(P. 1.)

*Warrant of Commitment on a Conviction where the Punishment is by Imprisonment.*

To the constable of —, and to the keeper of the — [house of correction] at —, in the said [county] of —.

Whereas *A. B.*, late of —, [labourer], was this day duly convicted before the undersigned [one] of Her Majesty's justices of the peace in and for the said [county] of —, for that [stating the offence as in the conviction], and it was thereby adjudged that the said *A. B.*, for his said offence should be imprisoned in the house of correction at —, in the said county [and there kept to hard labour] for the space of —: these are therefore to command you the said constable of —, to take the said *A. B.*, and him safely convey to the house of correction at —, aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said house of correction, to receive the said *A. B.* into your custody in the said house of correction, there to imprison him [and keep him to hard labour] for the



space of —; and for your so doing this shall be your sufficient warrant,

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L.S.)

(P. 2.)

*Warrant of Commitment on an Order where the Disobeying of it is punishable by Imprisonment.*

To the constable of —, and to the keeper of the —, [house of correction] at —, in the said [county] of —.

Whereas, on — last past complaint was made before the undersigned [one] of Her Majesty's justices of the peace in and for the said county of —, for that [*&c., as in the order*], and afterwards, to wit, on —, at —, the said parties appeared before me [*or as it may be in the order*], and thereupon, having considered the matter of the said complaint, I adjudged the said *A. B.* to [*&c., as in the order*], and that if upon a copy of the minute of that order being duly served upon the said *A. B.*, either personally or by leaving the same for him at his last or most usual place of abode, he should neglect or refuse to obey the same, it was adjudged that in such case the said *A. B.*, for such his disobedience, should be imprisoned in the [house of correction] at —, in the said county; [*and there kept to hard labour*] for the space of —, [*unless the said order should be sooner obeyed*]: and whereas it is now proved to me that after the making of the said order a copy of the minute thereof was duly served upon the said *A. B.*, but he then refused [*or neglected*] to obey the same, and hath not as yet obeyed the said order: these are therefore to command you, the said constable of —, to take the said *A. B.*, and him safely to convey to the [house of correction] at —, aforesaid, and there to deliver him to the keeper thereof, together with this precept: and I do hereby command you, the said keeper of the said [house of correction], to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him [*and keep him to hard labour*] for the space of —, and for so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L.S.)

(P. 3.)

*Warrant of Distress for Costs upon a conviction where the Offence is punishable by Imprisonment.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas *A. B.*, of —, labourer, was on — last past duly convicted before the undersigned, [one] of Her Majesties justices of



the peace in and for the said county, for that [*stating the offence as in the conviction*], and it was thereby adjudged that the said *A. B.* for his said offence should be imprisoned in the *house of correction* at —, in the said county [*and there kept to hard labour*] for the space of —; and it was also thereby adjudged that the said *A. B.* should pay to the said *C. D.* the sum of — for his costs in that behalf; and it was thereby ordered that if the said sum of — for costs should not be paid [*forthwith*] the same should be levied by distress and sale of the goods and chattels of the said *A. B.*; [and it was adjudged that in default of sufficient distress in that behalf, the said *A. B.* should be imprisoned in the said *house of correction* [*and there kept to hard labour*] for the space of —, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said *A. B.* to the said *house of correction*, should be sooner paid:] \* And whereas the said *A. B.*, being so convicted as aforesaid, and being required to pay the said sum of — for costs, hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*, and if within the space of — days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to — the clerk of the justices of the peace for the division of — in the said [*county*], that he may pay the same as by law directed, and may render the surplus (if any), on demand, to the said *A. B.*, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of — in the year of our Lord, —, at —, in the [*county*] aforesaid.

J. S, (L.S)

(P. 4.)

*Warrant of Distress for Costs upon an Order where the disobeying of the Order is punishable with Imprisonment.*

To the constable of —, and to all other peace officers in the said [*county*] of —.

Whereas on — last past complaint was made before the undersigned [*one*] of her Majesty's justices of the peace in and for the said county of —, for that [*&c., as in the order*], and afterwards, to wit, on —, at —, the said parties appeared before me, as such justice as aforesaid [*or as it may be in the order*], and thereupon, having considered the matter of the said complaint, I adjudged the said *A. B.* to [*&c., as in the order*]; and that if upon a copy of the minute of that order being served upon the said *A. B.*, either personally or by leaving the same for him at his last or most usual



abode, he should neglect or refuse to obey the same, I adjudged that in such case the said *A. B.* for such his disobedience should be imprisoned in the *house of correction* at —, in the said *county* [*and there kept to hard labour*] for the space of — [*unless the said order should be sooner obeyed*]; and I thereby also adjudged the said *A. B.* to pay to the said *C. D.* the sum of — for his costs in that behalf; and I ordered that if the said sum for costs should not be paid [*forthwith*] the same should be levied of the goods and chattels of the said *A. B.*; [and in default of sufficient distress in that behalf, I thereby adjudged that the said *A. B.* should be imprisoned in the said *house of correction* [*and there kept to hard labour*] for the space of —, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said *A. B.* to the said *house of correction*, should be sooner paid]: and whereas after the making of the said order a copy of the minute thereof was duly served upon the said *A. B.*, but the said *A. B.* did not then pay, nor hath he paid, the said sum of —, for costs or any part thereof, but therein hath made default:\* these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*, and if within the space of — days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to —, the clerk of the justices of the peace for the division of —, in the said [*county*], that he may pay the same as by law directed, and may render the overplus (if any) on demand to the said *A. B.* and if no such distress can be found, then that you certify the same unto me to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)

(P. 5.)

*Warrant of Commitment for want of Distress in either of the last Two Cases.*

To the constable of —, and to the keeper of the [*house of correction*], at —, in the said [*county*] of —.

Whereas [*&c., as in the last two forms respectively to the asterisk (\*), and then thus*]: And whereas afterwards, on the — day of —, in the year aforesaid, I the said *J. S.* issued a warrant to the constable of —, commanding him to levy the said sum of —, for costs, by distress and sale of the goods and chattels of the said *A. B.*: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said *A. B.*, but that no sufficient distress whereon to levy the



sum above mentioned could be found: These are therefore to command you the said constable of —, to take the said *A. B.*, and him safely to convey to the [*house of correction*] at —, aforesaid, and there deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said *house of correction*, to receive the said *A. B.* into your custody in the said *house of correction*, there to imprison him [*and keep him to hard labour*] for the space of —, unless the said sum, and all costs and charges of the said distress, [*and of the commitment and conveying of the said A. B. to the said house of correction,*] amounting to the further sum of —, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)

25. *Imprisonment for a subsequent offence, from what time.*] That where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed; and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

In carrying out this section the justice has a discretion as to the part which concerns him; but the constable has none.

26. *Costs upon dismissal, how recovered.*] That where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress (Q. 1) on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment such prosecutor or complainant may be committed (Q. 2) to the house of correction or common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

(Q. 1.)

*Warrant of Distress for Costs upon an Order for Dismissal of an Information or Complaint.*

To the constable of —, and to all other peace officers in the said [*county*] of —.

Whereas on — last past, information was laid [*or complaint was made*] before the undersigned [*one*] of Her Majesty's justices



of the peace in and for the said *county*, for that [*&c.*, as in the order of dismissal]; and afterwards to wit, on —, at —, both parties appearing before me in order that I should hear and determine the same, and the several proofs adduced to me in that behalf being by me duly heard and considered, and it manifestly appearing to me that the said information [*or complaint*] was not proved, I therefore dismissed the same, and adjudged that the said *C. D.* should pay to the said *A. B.* the sum of —, for his costs incurred by him in his defence in that behalf; and I ordered that if the said sum for costs should not be paid [*forthwith*] the same should be levied of the goods and chattels of the said *C. D.*; [and I adjudged that in default of sufficient distress in that behalf, the said *C. D.* should be imprisoned in the *house of correction* at —, in the said *county*, and there kept to hard labour, for the space of —, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said *C. D.* to the said *house of correction*, should be sooner paid: (\*) And whereas the said *C. D.*, being now required to pay unto the said *A. B.* the said sum for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *C. D.* and if, within the space of — days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and pay the money arising from such sale to —, the clerk of the justices of the peace for the division of —, in the said [*county*], that he may pay and apply the same as by law directed, and may render the overplus (if any), on demand, to the said *C. D.*, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)

(Q. 2.)

*Warrant of Commitment for want of Distress in the last Case.*

To the constable of —, and to the keeper of the *house of correction*] at —, in the said [*county*] of —.

Whereas [*&c.*, as in the last form to the asterisk (\*), and then thus]: And whereas afterwards, on the — day of —, in the year aforesaid, I the said justice issued a warrant to the constable of —, commanding him to levy the said sum of —, for costs by distress and sale of the goods and chattels of the said *C. D.*: And whereas it appears to me as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said *C. D.*, but that no sufficient distress whereon to levy the sum above



mentioned could be found : These are therefore to command you the said constable of —, to take the said *C. D.*, and him safely convey to the *house of correction* at — aforesaid, and there deliver him to the said keeper thereof, together with this precept ; and I do hereby command you the said keeper of the said *house of correction* to receive the said *C. D.* into your custody in the said *house of correction*, there to imprison him [*and keep him to hard labour*] for the space of —, unless the said sum, and all costs and charges of the said distress, [*and of the commitment and conveying of the said C. D. to the said house of correction,*] amounting to a further sum of —, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant,

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S, (L.S.)

27. *After appeal against conviction or order justice may issue warrants of distress for execution of the same. Costs of appeal, how recovered.*] That after an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought ; and if upon any such appeal, the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid ; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate (R.) that such costs have not been paid ; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress (S. 1) in manner aforesaid, and in default of distress he or they may commit (S. 2) the party against whom such warrant shall have issued in manner hereinbefore mentioned for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

This section in fact gives a mode of executing the order of sessions ; there is not, therefore, any necessity for a previous summons or an order of justices.



(R.)

*Certificate of the Clerk of the Peace that the Costs of an Appeal are not paid.*

Office of the clerk of the peace for the [county] of —.

(*Title of the Appeal.*)

I hereby certify that at a court of general quarter sessions of the peace holden at —, in and for the said [county] on — last past an appeal by *A. B.* against a conviction [or order] of *J. S.* esquire, one of Her Majesty's justices of the peace for the said [county], came on to be tried, and was then heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of —; for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said county on or before the — day of — instant, to be by him handed over to the said [respondent]; and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order. Dated the — day of —, 18—.

G. H.

[Deputy] clerk of the peace.

(S. 1)

*Warrant of Distress for Costs of an Appeal against a Conviction or Order.*

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas [*&c., as in the warrants of distress, N. 1, 2, ante, to the end of the statement of the conviction or order, and then thus*]: And whereas the said *A. B.* appealed to the court of general or quarter sessions of the peace for the said county against the said conviction [or order], to which appeal the said *A. B.* was the appellant, and the said *C. D.* [or *J. S.*, esquire, the justice of the peace who made the said conviction or order] was the respondent, and which said appeal came on to be tried, and was heard and determined, at the last general quarter sessions of the peace for the said county holden at —, on —, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of — for the costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace of the said [county] on or before the — day of —, 18—, to be by him handed over to the said [*C. D.*]: And whereas the [deputy] clerk



of the peace of the said [*county*] hath, on the — day of — instant, duly certified that the said sum for costs had not then been paid: (\*) These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said [*A. B.*], and if within the space of — days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to —, the clerk of the justices of the peace for the division of —, in the said [*county*], that he may pay and apply the same as by law directed, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord, — at —, in the [*county*] aforesaid.

J. N. (L.S.)

(S. 2.)

*Warrant of Commitment for Want of Distress in the last Case.*

To the constable of —, and to the keeper of the [*house of correction*] at —, in the said [*county*] of —.

Whereas [*&c., as in the last form to the asterisk (\*)*], and then thus]: And whereas afterwards, on the — day of —, in the year aforesaid, I the undersigned issued a warrant to the constable of —, commanding him to levy the said sum of — for costs by distress and sale of the goods and chattels of the said [*A. B.*]: And whereas it appears to me, as well as by the return of the said constable to the said warrant of distress or otherwise, that the said constable hath made diligent search for the goods and chattels of the said [*A. B.*], but that no sufficient distress whereon to levy the sum above mentioned, could be found: These are therefore to command you the said constable of —, to take the said [*A. B.*], and him safely convey to the [*house of correction*] at —, aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [*house of correction*], to receive the said [*A. B.*] into your custody in the said [*house of correction*], there to imprison him [*and keep him to hard labour*] for the space of —, unless the said sum, and all costs and charges of the said distress [*and of the commitment and conveying of the said A. B. to the said house of correction*], amounting to the further sum of — shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

J. N. (L.S.)



28. *On payment of penalty, &c., distress not to be levied, or the party, if imprisoned for non-payment, shall be discharged.]* That in all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums to such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for non-payment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

29. *In cases of summary proceedings one justice may issue summons or warrant &c., and after conviction or order may issue warrant of distress, &c.]* That in all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid, it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard or determined by two or more justices; and after the case shall have been so heard and determined, one justice may issue all warrants of distress or commitments thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard or determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

30. *Regulations as to the Payment of Clerk's Fees.]* That the fees to which any clerk of the peace, clerk of the special sessions, or clerk of the petty sessions, or clerk to any justice or justices out of sessions, shall be entitled, shall be ascertained, appointed, and regulated in manner following: (that is to say,) the justices of the peace at their quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, and the council or other governing body of every borough in England and Wales, shall, from time to time, as they shall see fit respectively, make tables of the fees which in their opinion should be paid to the clerks of the peace, to the clerks of special and petty sessions, and to the clerks of the justices of the peace within their several jurisdictions, and which said tables respectively, being signed by the chairman of every such court of quarter sessions, or by the mayor or other head officer of any such borough respectively, shall be laid before Her Majesty's principal secretary of state; and it shall be



lawful for such secretary of state, if he thinks fit, to alter such table or tables of fees, and to subscribe a certificate or declaration that such fees are proper to be demanded and received by the several clerks of the peace, clerks of special sessions and petty sessions, and the clerks to the several justices of the peace throughout England and Wales; and such secretary of state shall cause copies of such table or set of tables of fees to be transmitted to the several clerks of the peace throughout England and Wales, to be by them distributed to the several clerks of special sessions and petty sessions, and to the clerks to the justices within their several districts respectively; and if after such copy shall be received by such clerks or clerk he or they shall demand or receive any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of twenty pounds, to be recovered by action of debt in any of the superior courts of law at Westminster, by any person who will sue for the same: provided always, that until such table or set of tables shall be framed and confirmed and distributed as aforesaid, it shall be lawful for such clerk or clerks to demand and receive such fees as they are now by any rule or regulation of a court of quarter sessions or otherwise authorized to demand and receive.

31. *To whom penalties, &c. to be paid. Clerks to keep accounts of all monies received, &c., in the form in schedule in this Act, and render the same to the justices at sessions.*] That in every warrant of distress to be issued as aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act: and if any person convicted of any penalty, or ordered by a justice or justices of the peace to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction or order as aforesaid for non-payment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk: and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid. according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk, and every such gaoler or keeper of a prison shall keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid, in the form (T.) in the schedule



to this Act annexed, or to the like effect, and shall once in every month render a fair copy of every such account unto the justices who shall be assembled at the petty sessions for the division in which such justice or justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf.

The word "forthwith" in this section means "without unnecessary delay (a)."

(T.)

*Account of Clerk of the Justices at Petty Sessions, and of the Keeper of the Gaol or House of Correction.*

Monthly return of Her Majesty's justices of the peace at the petty sessions of the peace for the division of —, in the county of —, assembled on the — day of —, 18—, of fines, penalties, and sums of money received by the clerk of the said court [or by the keeper of the gaol or house of correction at —]. and how applied, from the — day of —, 18—, to the — day of —, 18—.

| Name of party convicted. | Date. | Offence. | Costs. | Amount thereof paid. | Fine. | Amount thereof paid. | Amount of fine received for county rate. | Amount of fine otherwise applied. | Punishment when fine not paid. | Names of convicting magistrates. | Reasons of Non-payment, or other Observations. |
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(Signed) \_\_\_\_\_

Clerk to the said court, or keeper of the above gaol or house of correction.

32. *Forms in the schedule deemed valid.*] That the several forms in the schedule to this Act contained, or forms to the like effect, shall be deemed good, valid, and sufficient in law.

(a.) *R. v. Worcestershire JJ.*, 10 J. P. 293.



And these forms must be deemed applicable to all convictions and orders in cases not excepted in the 35th section (b).

33. *Metropolitan police magistrates and stipendiary magistrates in other places may act alone.*] That any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, and shall have full power to do alone whatsoever is authorized by this Act to be done by any one or more justice or justices of the peace; and that the several forms hereinafter mentioned may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in Act passed in the tenth year of the reign of His late Majesty King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis," or in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for further improving the Police in and near the Metropolis," or in an Act passed in the same year of the reign of Her present Majesty, intituled "An Act for Regulating the Police Courts in the Metropolis," or in an Act passed in the fourth year of the reign of Her present Majesty, intituled "An Act for better defining the Powers of Justices within the Metropolitan Police District."

34. *The lord mayor, or any alderman of London, may act alone.*] That it shall be lawful for the lord mayor of the city of London, or for any alderman of the said city, for the time being, sitting at the mansion house, or guildhall justice rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for Regulating the Police in the City of London."

35. *To what this Act shall not extend.*] That nothing in this Act shall extend or be construed to extend to any warrant or order for the removal of any poor person who is or shall become chargeable to any parish, township, or place; nor to any complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance, medicine, clothing, or care of any lunatic or insane person; nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post office; nor shall any thing in this Act extend or be construed to extend to any complaints, orders, or warrants in matters of bastardy made against the

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(b) *R. v. Hyde*, 21 Law J. 94, m. *Ex parte Allison*, 24 Law J. 73, m.



putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of warrants for compelling the appearance of such putative father, or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same; nor shall any thing in this Act extend to any proceedings under the Acts of parliament regulating or otherwise relating to the labour of children and young persons in mills or factories.

36. *After commencement of this Act the following statutes and parts of statutes repealed.*] That the following statutes and parts of statutes shall from and after the day on which this Act shall commence and take effect, be and the same are hereby repealed: (that is to say,) so much of a certain Act of parliament made and passed in the eighteenth year of the reign of Her Majesty Queen Elizabeth, intituled, "An Act to redress disorders in Common Informers," as relates to exhibiting an information and pursuing the same in person, and not by any attorney or deputy; and so much of a certain other Act made and passed in the thirty-first year of the reign of Her said Majesty Queen Elizabeth, intituled "An Act concerning Informers," as relates to the time limited for exhibiting an information for a forfeiture upon any penal statute; and so much of a certain other Act made and passed in the twenty-seventh year of the reign of His late Majesty King George the Second, intituled "An Act for the more easy and effectual proceeding upon Distresses to be made by Warrants of Justices of the Peace," as relates to such distresses; and so much of an Act made and passed in the eighteenth year of His late Majesty King George the Third, intituled "An Act for the payment of Costs to Parties on Complaints determined before Justices of the Peace out of Sessions, for the Payment of the Charges of Constables in certain Cases, and for the more effectual Payment of Charges to Witnesses and Prosecutors of any Larceny or other Felony," as relates to such costs on the said complaints; and so much of a certain other Act made and passed in the thirty-third year of the reign of His said late Majesty King George the Third, intituled "An Act to authorize Justices of the Peace to impose Fines upon Constables, overseers, and other Peace or Parish Officers for neglect of Duty, and on Masters of Apprentices for ill treatment of such their Apprentices, and also to make Provision for the Execution of Warrants of Distress granted by Magistrates," as relates to the executions of such warrants of distress; and a certain other Act made and passed in the third year of the reign of His late Majesty King George the Fourth, intituled "An Act to facilitate summary Proceedings before Justices of the Peace and others;" and a certain other Act made and passed in the fifth year of the reign of His late Majesty King George the Fourth, intituled "An Act for the more effectual Recovery of Penalties before Justices and Magistrates on Conviction of Offenders; and for facilitating the Execution of Warrants by Constables:" and so much of a certain Act made and passed in the seventh year of the reign of His late Majesty King William the Fourth, intituled, "An Act for enabling Persons indicted for Felony to make their Defence by Counsel or Attorney," as relates to the right of persons accused, in case of summary con-



victions, to make their defence, and to have all witnesses examined and cross-examined by counsel or attorney; and all other Act or Acts or parts of Acts which are inconsistent with the provisions of this Act, save and except so much of the said several Acts as repeal any other Act or parts of Acts, and also except as to proceedings now pending to which the same or any of them are applicable.

37. *Act to extend to Berwick-upon-Tweed, but not to Scotland, Ireland, &c., except as to backing of warrants under 11 & 12 Vict. c. 42]* That the town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this Act; but that nothing in this Act shall extend or be construed to extend to Scotland or Ireland, or to the Isles of Man, Jersey, Guernsey, Alderney, or Sark, save and except the several provisions respecting the backing of warrants contained in an Act of parliament passed in this present session, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences;" and incorporated into this Act as aforesaid.

38. *Commencement of Act.]* That this Act shall commence and take effect from the second day of October in the year of our Lord one thousand eight hundred and forty-eight.

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## SECTION VI.

### PROCEEDINGS FOR RATES.

*By stat. 12 Vict. c. 14,—An Act to enable Overseers of the Poor and Surveyors of the Highways to recover the Costs of distraining for Rates,—it is enacted:—*

Sect. 1. *Where a warrant of distress is granted for a poor-rate or highway-rate, &c., the costs of obtaining it may also be levied.]* That provision is already made by law for the recovery of the sum or sums at which any person is rated or assessed to the relief of the poor, or is rated or assessed in any rate for the highways, in England or Wales, by distress and sale of his goods and chattels, and in default of such distress by commitment to prison until the same shall be paid; but no provision is made for levying the costs and expenses incurred by the overseers of the poor or the surveyors of highways in the recovery of the same respectively: and enacts, that it shall be lawful hereafter for all justices of the peace, if in their discretion they shall so think fit, in any warrant of distress they shall make and issue for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment for the relief of the poor or for the highways in England or Wales, or in or by any other rate or assessment which by law now or hereafter is or shall be directed to be enforced or recovered in the same manner as a poor rate, or in any warrant for the levying of any arrears of the same, to order that a sum, such as they may deem reasonable, for the costs and expenses



which such overseers or surveyors, or the persons applying for such warrant, shall have incurred in obtaining the same, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling of the said distress.

2. *Imprisonment in default of distress.*—43 Eliz. c. 2.—*So much of 43 Eliz. c. 2, as relates to commitments for non-payment of rates, or for default of distress, repealed.*—*Power to order imprisonment not exceeding three months in default of distress.*] Recites that by an Act passed in the forty-third year of the reign of Queen Elizabeth, intituled “An Act for the Relief of the Poor,” it is amongst other things enacted, that in default of distress for a poor rate it shall be lawful for two justices of the peace to commit the party against whom the distress warrant shall have issued to the common gaol of the county, there to remain without bail or mainprize until payment: and that it is desirable to limit the time within which a person assessed to a poor rate, or any other of the rates or assessments aforesaid, may be imprisoned for non-payment of the same: and enacts, that so much of the said recited Act as relates to the commitment of any person to the county gaol for non-payment of any poor rate, or for default of distress whereon to levy the same, shall be and the same is hereby repealed; and every person now undergoing any such imprisonment under or by virtue of the said recited Act shall be discharged from such imprisonment so soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums with which he or she is charged; and that hereafter, when to any warrant of distress for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment hereinbefore mentioned, it shall be returned by the constable or person having the execution of such warrant that he could find no goods or chattels, or no sufficient goods or chattels, whereon to levy such sum or sums, together with the costs of or occasioned by the levying of the same, it shall be lawful for any two or more justices of the peace before whom the same shall be returned, or for any two or more justices of the peace for the same county, riding, division, liberty, city, borough, or place, if in their discretion they shall so think fit, to issue their warrant of commitment against the person with relation to whom such return shall be so made as aforesaid, in the form (D.) in the schedule to this Act annexed, or in any form to the like effect, and thereby order such person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar months, unless the sum or sums therein mentioned shall be sooner paid; and every such warrant of commitment made or issued for default of distress as aforesaid shall be made as well for the non-payment of the costs and expenses so as aforesaid incurred in obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison, (the amount of such several costs, expenses, and charges being stated in such warrant of commitment,) as for the non-payment of the sum or sums alleged to be due for the said rates respectively.



3. *One warrant may be issued against several rate-payers; but otherwise as to a commitment in default of distress.*] That for the saving of expenses in the levying of any sum or sums for rate and costs as aforesaid it shall be lawful to make and issue one warrant of distress against any number of persons neglecting or refusing to pay the same, in the form in the schedule to this Act annexed; but nothing herein shall be deemed or construed to authorize justices in like manner to grant or issue one warrant of commitment against several persons in default of distress as aforesaid.

4. *To whom warrants of distress or commitment to be directed.*] That the warrants aforesaid may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, or the surveyors of the highways respectively, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

5. *Summons, and how served; if not obeyed, the justices may proceed ex parte.*] That every summons to be issued against any person for non-payment of any sum for which he or she is or shall be so rated or assessed as aforesaid shall be directed to such person, and may be in the form (B.) in the schedule to this Act annexed, or in any form to the like effect; and the same may be served by any churchwarden or overseer of the poor, or surveyor of the highways, respectively, or constable or other person, to whom it shall be delivered for that purpose, upon the person to whom it is so directed, by delivering the same to the party personally or by leaving the same with some person for him or her at his or her last place of abode: and the person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of the said summons; and if, upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justices then present that such summons was duly served as aforesaid a reasonable time before the time so appointed for his or her appearance as aforesaid, it shall be lawful for such justices of the peace in their discretion, if they shall so think fit, to proceed *ex parte*, in the same manner to all intents and purposes as if such party had personally appeared before them in obedience to the said summons.

6. *On payment of tender of rate and costs proceedings to cease.*] That in all cases where any proceedings have been or shall hereafter be taken to compel payment of any sum for which any such person is or shall be so rated or assessed as aforesaid, if at any time before such person shall be committed to and lodged in prison for non-payment thereof, or for or by reason of its being returned to such warrant of distress as aforesaid that there are no goods or chattels or no sufficient goods or chattels of such person whereon the same may be levied as aforesaid, such person shall pay or tender to the churchwardens or overseers of the poor, or any of them, or to the surveyor of highways respectively, or other person authorized to collect or receive such rate, the sum so sought to be recovered, together with the amount of



all costs and expenses up to that time incurred in the proceedings so taken to compel payment thereof as aforesaid, then and in every such case the person to whom such sum and costs shall be so paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken.

7. *Costs already recovered or proceeded for deemed legal.*] That in all cases where such costs and expenses as aforesaid shall have been paid and received, or any proceedings taken or imprisonment had for non-payment of the same, such payment and receipt, and such proceedings or imprisonment, shall be deemed legal to all intents and purposes, and no action or other proceeding shall be had or proceeded in for or in respect of the same.

8. *Forms in schedule valid.*] Recites that it may be convenient and save expense and litigation, if forms to be used for the purpose of levying the sums aforesaid should be given: and enacts, that the forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

9. *Imprisonment for non-payment of church-rate limited.*] Recites that it is desirable to limit the time within which a person assessed to a church-rate may be imprisoned for non-payment of the same: and enacts, that every person now undergoing any such imprisonment shall be discharged from such imprisonment as soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums with which he or she is charged; and that hereafter no person shall be imprisoned for the non-payment of any church-rate for any time exceeding three calendar months.

The following are the forms given in the schedule to the Act.

(A. 1.)

*Complaint of the Overseers or Surveyors against one Ratepayer.*

——— } Be it remembered, that on the —— day of ——, in the  
to wit. } year of our Lord ——, the [churchwardens and overseers  
of the poor, or the surveyors of the highways] of the parish of ——,  
in the county of —— aforesaid, by C. D., one of the said [overseers  
or surveyors], complained to the undersigned, [one] of Her Majesty's  
justices of the peace in and for the said [county], that A. B. of the  
said [parish], being a person duly rated and assessed to [the relief  
of the poor, or the maintenance of the highways] of the said parish,  
in and by a rate\* made on the —— day of —— in the year ——,  
in the sum of ——, hath not paid the same or any part thereof, but  
hath refused so to do: wherefore the said [churchwardens and over-  
seers or surveyors], by C. D. aforesaid, pray that the said A. B. may  
be summoned to appear before two of Her Majesty's justices of the  
peace, to show cause why he hath not paid and refuses to pay the  
said sum. C. D.

Made and exhibited before me ——, at  
——, in the county of ——, on this  
—— day of ——, 18—. }

E. F.

Or, in and by several rates made on —— and on ——, in the  
several sums of —— and of ——.



## (A. 2.)

*Complaint against several Ratepayers.*

——— } Be it remembered, that on the —— day of ——, in the  
to wit. } year of our Lord ——, the [churchwardens and over-  
seers of the poor, *or* the surveyors of the highways] of the parish  
of ——, in the [county] of —— aforesaid, by *C. D.*, one of the said  
[overseers *or* surveyors], complain to the undersigned, [one] of Her  
Majesty's justices of the peace in and for the said [county], that the  
several persons whose names are mentioned and set out in the  
schedule hereunder written, being persons duly rated and assessed to  
[the relief of the poor, *or* the maintenance of the highways] of the said  
parish, in and by the rates in the said schedule mentioned, in certain  
sums set down opposite to their respective names in the said schedule,  
have not respectively paid the said sums or any part thereof, but  
have respectively refused so to do: wherefore the said [church-  
wardens and overseers, *or* surveyors], by *C. D.* aforesaid, pray that the  
said several persons may respectively be summoned to appear before  
two of Her Majesty's justices of the peace, to show cause re-  
spectively why they have not paid and refuse to pay the said sums  
respectively.

## SCHEDULE.

| Names<br>of the Ratepayers. | Residence.      | Under Rate<br>dated<br>the —— 1857. |    |    | Arrears due<br>under Rate<br>dated the ——<br>1856. |    |    | Total<br>Sum due. |    |    |
|-----------------------------|-----------------|-------------------------------------|----|----|----------------------------------------------------|----|----|-------------------|----|----|
|                             |                 | £                                   | s. | d. | £                                                  | s. | d. | £                 | s. | d. |
| A. B.    -    -             | (here state it) | 1                                   | 7  | 0  | 1                                                  | 7  | 0  | 2                 | 14 | 0  |
| I. K.    -    -             | -    -    -     | 0                                   | 13 | 0  | -                                                  | -  | -  | 0                 | 13 | 0  |
| L. M.    -    -             | -    -    -     | -                                   | -  | -  | 0                                                  | 18 | 6  | 0                 | 18 | 6  |
| N. P.    -    -             | -    -    -     | 0                                   | 14 | 3  | 0                                                  | 14 | 3  | 1                 | 8  | 6  |

*C. D.*

Made and exhibited before me ——, at  
——, in the county of ——, on this  
—— day of ——, 18——.

*E. F.*

## (B.)

*Summons upon the Complaint.*To *A. B.*, of ——.

Whereas complaint hath this day been made before the under-  
signed, [one] of Her Majesty's justices of the peace in and for the  
[county] of ——, by the [churchwardens and overseers of the poor,



or surveyors of the highways] of the parish of —, in the said [county], that you, being a person duly rated and assessed to [the relief of the poor, or the maintenance of the highways] of the said parish, in and by a rate made on the — day of —, 18—, in the sum of —, hath not paid the same or any part thereof, but hath refused so to do: these are therefore to command you, in Her Majesty's name, to be and appear on —, at — o'clock in the forenoon, at —, before such two or more justices of the peace for the said [county] as may then be there, to show cause why you have not paid and refuse to pay the same, otherwise you shall be proceeded against by default as if you had appeared, and be dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid. *E. F.*

Take notice that you have already incurred the under-mentioned costs; viz.:

|                                                      | <i>s.</i> | <i>d.</i> |
|------------------------------------------------------|-----------|-----------|
| Clerk to the justices - - - - -                      | -         | -         |
| Overseer [or surveyor], for obtaining the summons -  | -         | -         |
| Constable, for serving ditto - - - - -               | -         | 1 0       |
| Ditto, travelling expenses at three-pence per mile - | -         | -         |
|                                                      | <hr/>     |           |
| Total -                                              | -         | -         |
|                                                      | <hr/>     |           |

If the amount of these charges, together with the rate claimed, be paid to the overseer [or surveyor] before the day on which the summons is returnable, all further proceedings will be stopped.

(C. 1.)

*Warrant of Distress against One Ratepayer.*

To the overseers of the poor [or to the surveyors of the highways] of the parish of — in the [county] of —, and to the constable of —, and to all other peace officers in the said [county].

Whereas on — last past, a complaint was made before *E. F.*, one of Her Majesty's justices of the peace in and for the [county] of —, by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of —, in the said [county], that *A. B.*, being a person duly rated and assessed to the relief of the poor [or to the maintenance of the highways] of the said parish in and by a rate made on —, in the sum of —, had not paid the same or any part thereof, but had refused so to do; and now at this day, to wit, on —, at —, the parties aforesaid appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said county [or the said churchwardens and overseers, or surveyors, by *C. D.*, one of the said overseers, or surveyors, appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said county]; but the said *A. B.*, although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said *A. B.* has been duly served with the summons in this behalf, which required him to be and appear here at this day before such two or more justices of



the peace as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now having heard the matter of the said complaint, and it being now duly proved to us upon oath [in the presence and hearing of the said *A. B.*], that an assessment for the [relief of the poor, *or* the maintenance of the highways] of the said parish of —, and for other purposes chargeable thereon according to law, dated the —, was duly made, allowed, and published, and that the said *A. B.* is therein and thereby assessed at the sum of — aforesaid,\* and that the said sum hath been duly demanded of the said *A. B.*, but that he hath not paid, and hath refused and still refuses to pay the same; and the said *A. B.* now not showing to us any sufficient cause for not paying the same, these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*; and if within the space of [*five*] days after the making of such distress the said sum, and the sum of — for the costs incurred by the said [churchwardens and overseers, *or* surveyors] in obtaining this warrant, together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale you retain the said sums of — and —, rendering the overplus, on demand to the said *A. B.*, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

Given under our hands and seals, this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

*E. F.*

*G. H.*

\* “And that a certain other assessment for the relief,” &c., to the asterisk, if there be arrears.

(C. 2.)

*Warrant of Distress against several Ratepayers.*

To the overseers of the poor [*or* the surveyors of the highways] of the parish of —, in the [*county*] of —, and to the constables of —, and to all other peace officers in the said [*county*].

Whereas on — last past a complaint was made before *E. F.*, one of Her Majesty's justices of the peace in and for the [*county*] of —, by the [churchwardens and overseers of the poor, *or* the surveyors of the highways] of the parish of —, in the said [*county*], that the several persons whose names are mentioned and set forth in the schedule hereunder written, being persons duly rated and assessed to [the relief of the poor, *or* maintenance of the highways] of the said parish, in and by the rates in the schedule in that complaint and in this warrant underwritten, in certain sums set down opposite to their respective names in the said schedule, had not respectively paid the said sums or any part thereof, but had re-



spectively refused so to do: and now at this day, to wit, on —, at —, the said [churchwardens and overseers, *or* surveyors] by *C. D.*, one of the said overseers, *or* surveyors, and *A. B.*, *I. K.* and *L. M.*, some of the said parties in the said schedule mentioned, appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said [county]; but the said *N. P.*, although duly called, doth not appear by himself, his counsel, or attorney, and it is now satisfactorily proved to us on oath that the said *N. P.* has been duly served with the summons in this behalf, which required him to be and appear here at this day before such two or more justices of the peace as should now be here to answer the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint against the said several parties, and it being now duly proved to us upon oath, in the presence of the parties so appearing as aforesaid, that an assessment for [*the relief of the poor*] of the said parish of —, and for other purposes chargeable therein according to law, dated the — was duly made, allowed, and published, and that the said several persons whose names are mentioned and set out in the schedule hereunder written are therein and thereby assessed at the sums set down opposite to their respective names in the said schedule, and that the said several sums have been duly demanded of them respectively, but they have not nor hath any of them paid the said sums or any of them, or any part thereof respectively, but they have refused and still do refuse to pay the same respectively, and have not, nor hath any of them, showed to us sufficient cause for not paying the same; these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the several persons whose names are mentioned and set out in the schedule hereunder written; and if within the space of five days after the making of such distresses respectively the said several sums set opposite to their respective names at which they were so rated and assessed as aforesaid, and the said several sums for costs incurred by the said [churchwardens and overseers, *or* surveyors] also set opposite to their respective names, together with the reasonable charges of taking and keeping the said distress in each case, shall not be paid, that then you do sell the goods and chattels of the party so making default so by you distrained, and out of the money arising by such sales respectively you retain the sums so set opposite to the name of each party whose goods you shall have so sold, rendering to him the overplus, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if in any of the cases mentioned in the schedule hereunder written no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.



## SCHEDULE.

| Names<br>of Ratepayers. | Residence.        | Under Rate<br>dated<br>—, 1857. | Arrears due<br>under Rate<br>dated —, 1856. | Costs. |    |    | Total. |    |    |
|-------------------------|-------------------|---------------------------------|---------------------------------------------|--------|----|----|--------|----|----|
|                         |                   | £ s. d.                         | £ s. d.                                     | £      | s. | d. | £      | s. | d. |
| A. B.                   | - (here state it) | 1 7 0                           | 1 7 0                                       | 0      | 6  | 0  | 3      | 0  | 0  |
| I. K.                   | - - -             | 0 13 0                          | - - -                                       | 0      | 2  | 0  | 0      | 15 | 0  |
| L. M.                   | - - -             | - - -                           | 0 18 6                                      | 0      | 3  | 0  | 1      | 1  | 6  |
| N. P.                   | - - -             | 0 14 3                          | 0 14 3                                      | 0      | 5  | 0  | 1      | 13 | 6  |

Given under our hands and seals, this — day of —, in the year of our Lord—, at —, in the [county] aforesaid.

*E. F.*  
*G. H.*

(D.)

*Warrant of Commitment in Default of Distress.*

To the overseers of the poor [or the surveyors of the highways] of the parish of —, in the [county] of —, and to the constable of —, and to all other peace officers in the said [county], and to the keeper of the [house of correction] at —, in the said [county].

Whereas on — last past a complaint was made before *E. F.*, esquire, one of Her Majesty's justices of the peace in and for the said [county] of —, by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of —, in the said [county], that *A. B.*, being a person duly rated to the [relief of the poor, or maintenance of the highways] of the said parish, in and by a rate made on —, in the sum of —, had not paid the same or any part thereof, but had refused so to do; and afterwards on —, at —, the parties aforesaid appeared before *E. F.* and *G. H.*, esquires, two of Her Majesty's justices of the peace in and for the said county [or the said churchwardens and overseers, or surveyors, by *C. D.*, one of the said overseers, or surveyors, appeared before *E. F.* and *G. H.*, esquires, two of Her Majesty's justices of the peace in and for the said county;] but the said *A. B.*, although duly called, did not appear by himself, his counsel, or attorney, and it was then satisfactorily proved to the said justices that the said *A. B.* had been duly served with the summons in that behalf, which required him to be and appear there at that day before such two or more justices of the peace as should then be there, to answer the said complaint, and to be further dealt with according to law; and then having heard the matter of the said complaint, and it being then duly proved to the said justices upon oath [in the presence and hearing of the said *A. B.*] that an assessment for the [relief of the poor, or the maintenance of the highways] of the said parish of —, dated the —, was duly made, allowed, and published, and that



the said *A. B.* was therein and thereby assessed at the sum of — aforesaid, and that the said sum had been duly demanded of the said *A. B.*, but that he had not paid, and had refused and still refused to pay the same, and the said *A. B.* then not showing to the said *E. F.* and *G. H.* any sufficient cause for not paying the same, the said justices thereupon then issued a warrant to —, commanding them to levy the said sum of —, and the sum of —, for the costs incurred in obtaining that warrant, by distress and sale of the goods and chattels of the said *A. B.*: and whereas it now appears to me, the undersigned, one of Her Majesty's justices of the peace in and for the said [county], as well by the return of the said — to the said warrant of distress as otherwise, that the said — hath made diligent search for the goods and chattels of the said *A. B.*, but that no sufficient distress whereon to levy the said sums above mentioned could be found: these are therefore to command you the said [churchwardens and overseers, or surveyors] and constable and peace officers, or some or one of you, to take the said *A. B.*, and him safely to convey to the [house of correction] at — aforesaid, and there deliver him to the said keeper together with this precept: and I do hereby command you, the said keeper, of the said [house of correction], to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him for the space of —, unless the said sums of —, and —, together with the sum of —, for the costs attending the said distress, and the further sum of —, being the costs and charges of this commitment, and of taking and conveying the said *A. B.* to prison, making in the whole the sum of —, shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of —, in the year of our Lord —, at — in the [county] aforesaid.

*J. S.* (L.S.)

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## SECTION VII.

### EVIDENCE.

*Evidence by interested witnesses.*] By stat. 6 & 7 Vict. c. 85, "no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence, either in person or by deposition, according to the practice of the court on the trial of any issue joined or of any matter or question, or on any inquiry arising in any suit, action or proceeding, civil or criminal, in any court, or before any judge, jury, sheriff, coroner, magistrate, officer, or person having by law or by consent of parties authority to hear, receive and examine evidence, but that every person so offered may and shall be admitted to give evidence on oath, or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question or in the event of the trial of any issue, matter,



question or inquiry, or of the suit, action, or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence: provided that this Act shall not render competent any party to any suit, action, or proceeding, individually named in the record, or any lessor of the plaintiff, or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively."

The exceptions in the above proviso, however, have been since repealed by stat. 14 & 15 Vict. c. 99, s. 1.

*Evidence by an accomplice.*] It appears from the statement of Mr. Phillips, in his work on Evidence, "that a conviction obtained upon the unsupported testimony of an accomplice, is strictly legal." To which he adds, "but it has always been considered as a general rule of practice, that the testimony of an accomplice ought to receive confirmation, and that unless it is corroborated in some material part by unimpeachable evidence, the presiding judge ought to advise the jury to acquit the prisoner." And he adds further, that if the presiding judge did not so advise, or the jury would not acquit, "it could not properly be said in either case, consistently with the authorities on the subject, that the conviction would be illegal." It has since been decided, in more than one case, by judges in the crown courts at the assizes, that a prisoner ought not to be convicted on the unsupported evidence of an accomplice. In *Reg. v. Keats and another*, 7 J. P. 484, the prisoners were, by the direction of the learned judge, Coleridge, acquitted, because there was no such corroboration.

But in *Reg. v. Skiller*, 9 J. P. 314, the rule seems to have undergone another alteration, in consequence of the passing of the 6 & 7 Vict. c. 85, Lord Denman's Act for the Improvement of the Law of Evidence. There the prisoner was indicted for larceny. The only evidence against him was that of an accomplice, who was not confirmed in any particular of his evidence against the other prisoner. At the close of the case for the prosecution, it was submitted to the learned judge, that there was no evidence for the consideration of the jury, except that of the accomplice, and that in all such cases it had been the constant habit of judges to stop the case, and direct an acquittal. Erle, J. replied that, "before the recent statute, the 6 & 7 Vict. c. 85, it was decided on several occasions that a jury could, if they please, convict a prisoner on the evidence of an accomplice alone. This evidence, however, was considered unsatisfactory, since, if the witness had been convicted of the offence of which, by his evidence, he must own himself guilty, he would have been altogether incompetent, and his evidence would have been entirely rejected. The effect of the statute to which I have referred, is to render a party convicted of felony a competent witness; if he would be competent as a convicted felon, *à fortiori* he must be competent if not convicted: and the rule, I think, therefore, must be



necessarily altered, and his evidence submitted to the consideration of the jury. At the same time, I think such evidence very unsatisfactory, and I shall advise the jury not to act upon it." Accordingly, his lordship in summing up, told the jury, "that if the evidence given by the accomplice satisfied them, they were at liberty to convict; but he considered the evidence of so unsatisfactory a character, that he advised them not to act upon it." The prisoner was, in consequence of this recommendation, acquitted.

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## SECTION VIII.

### DUTIES OF CONSTABLES IN PARTICULAR CASES.

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| 2. <i>Alehouses and beer shops</i> , p. 245.                  | 26. <i>Hawkers and pedlars</i> , p. 322.                                 |
| 3. <i>Approver</i> , p. 251.                                  | 27. <i>Highways, turnpikes</i> , p. 329.                                 |
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| 5. <i>Attainder</i> , p. 253.                                 | 29. <i>Lodging-houses</i> , p. 340.                                      |
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| 20. <i>Eavesdroppers, night-walkers, &amp;c.</i> , p. 289.    | 44. <i>Swearing</i> , p. 406.                                            |
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| 22. <i>Fish and fisheries</i> , p. 295.                       | 46. <i>Trespass, wilful</i> , p. 407.                                    |
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#### 1. *Affray*.

An affray is the fighting of two or more persons in some public place, to the terror of the Queen's subjects: for if the fighting be in private it is not an affray, but an assault (a). It differs from a riot

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(a) 4 Bla. Com. 145.



in not being premeditated: two persons may be guilty of an affray, but it requires three or more to constitute a riot—mere quarrelsome words will not make an affray (*b*).

To support a prosecution for an affray, it must be proved: 1st, The fighting; 2nd, That it was a public place; 3rd, That it was to the terror of the Queen's subjects; 4th, That two or more persons were engaged in it.

In the case of *Timothy v. Simpson*, Parke, B., said, It is clear that *any* person present may arrest the affrayer, at the moment of the affray, and detain him till his passion has cooled and his desire to break the peace has ceased, and then deliver him to a peace officer. And if that be so, what reason can there be why he may not arrest an affrayer after the actual violence is over, but whilst he shows a disposition to renew it by persisting in remaining on the spot where he has committed it? Both cases fall within the same principle, which is, that for the sake of the preservation of the peace, any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is likely to be endangered by his acts. In truth, whilst those are assembled together who have committed acts of violence and the danger of their renewal continues, the affray itself may be said to continue; and *during the affray* the constable may not merely on his own view, but on *the information* and complaint of another, arrest the offender, and of course the person so complaining is justified in giving the charge to the constable (*c*).

Before a private person interferes to prevent a breach of the peace, as an affray, he is bound to notify his intention of so doing, otherwise the party engaged in the affray may imagine that he comes to act as a party (*d*). Lord Tenterden remarked, in the case of *Fox v. Gaunt*, 3 B. & A. 798, that it was much better for a private person in misdemeanors to apply to a magistrate for a warrant, than take the law into their own hands, which they were apt to do.

## 2. Alehouses and Beer Shops.

*Alehouses*, 245.

*Beer shops*, 247.

*Hours of opening on Sunday, &c.*, 249.

*Refusing to admit the constable*, 251.

*Alehouses.*] At common law, if there be disorderly drinking or noise at an unseasonable hour of night, especially in inns, taverns, or alehouses, the constable and his watch demanding entrance, and being refused, may break open the doors to see and suppress the disorder (*e*).

Of course a constable may at any time repress an affray, &c., in his presence in a public-house.

By the 9 G. 4, c. 61, s. 21, all persons licensed under this Act, shall not wilfully or knowingly permit drunkenness, or other disorderly con-

(*b*) 4 Bla. Com. 146; Roscoe's Digest, 243.

(*c*) 1 C. M. & R. 762; 4 Arch. J. P. 16.

(*d*) 1 East's P. C. 306; Fost. 310; 1 Arch. J. P. 130.

(*e*) See 2 Hale, P. C. 95.



duct in his or her house or premises; and do not knowingly suffer any unlawful games, or any gaming whatever therein, and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; and do not keep open his or her house, except for travellers, nor permit or suffer any beer or other exciseable liquors to be conveyed from or out of his or her premises during the usual hours of the morning and afternoon divine service, in the church or chapel of the parish or place in which his or her house is situated, on Sundays, Good Fridays, and Christmas-day, under a penalty of not more than five pounds for the first offence.

Every person licensed under this Act who shall be convicted before two justices acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person of any offence against the tenor of the licence to him granted, shall, unless proof be adduced to the satisfaction of such justices that such person had been theretofore convicted before two justices, within the space of the three years next preceding, of some offence against the tenor of the licence subsisting at the time when such last-mentioned offence was committed, be adjudged by such justices to be guilty of a first offence against the provisions of this Act relative to the maintenance of good order and rule, and to forfeit and pay any sum not exceeding five pounds, together with the costs of the conviction; but if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of the three years next preceding, of one offence only against the tenor of the licence subsisting at the time when such last-mentioned offence was committed, such person shall be adjudged by such justices to be guilty of a second offence against the provisions of this Act as aforesaid, and to forfeit and pay any sum not exceeding ten pounds, together with the costs of the conviction; but if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of the three years next preceding, of two separate offences against the tenor of the licences subsisting at the times when such last-mentioned offences were committed, it shall be lawful for the said justices and they are hereby required to adjourn the further consideration of the charge so made against such person as aforesaid to the special session to be then next holden under this Act for the division or place in which shall be situate the house kept by such person, or to the general annual licensing meeting for the said division or place, if such meeting shall take place before any such special session shall be holden; and such justices shall issue their summons to the person so charged to appear at such special session or at such general annual licensing meeting, then and there to answer to the matter of such charge, and shall bind the person who shall make such charge, and any other person who shall have any knowledge of the circumstances thereof, in a sufficient recognizance, to appear at such special session or at such general annual licensing meeting, then and there to prosecute and to give evidence upon such charge; and if proof shall be adduced to the satisfaction of the justices assembled at such special session or at such general annual



licensing meeting, that such person so charged is guilty of the offence with which he is so charged, such person shall be adjudged to be guilty of a third offence against the provisions of this Act as aforesaid, and to forfeit and pay any sum not exceeding fifty pounds, together with the costs of the conviction (*a*).

The following is a list of the offences against the licence:—

1, Fraudulently diluting or adulterating exciseable liquors, or selling them knowing them to have been fraudulently diluted or adulterated;

2, Using in the selling thereof any measures which are not of the legal standard;

3, Wilfully or knowingly permitting drunkenness or other disorderly conduct in the house or premises;

4, Knowingly suffering any unlawful game or any gaming whatsoever therein. The game of dominoes is not an unlawful game within the meaning of this provision (*b*);

5, Knowingly permitting or suffering persons of notoriously bad character to assemble and meet together therein;

6, Not maintaining good order and rule in the house.

Selling exciseable liquors by retail, without licence, is punishable by stat. 9 Geo. 4, c. 61, s. 18.

And it shall be lawful for any two justices acting for any count or place where any riot or tumult shall happen or be expected to take place to order or direct that every person licensed under this Act, and keeping any house situate within their respective jurisdictions in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which the said justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justice shall have so ordered or directed such house to be closed shall be taken and deemed to have not maintained good order and rule therein (*c*).

*Beer shops.*] Selling beer, cider, or perry, in quantities less than four and a half gallons is punishable by stat. 4 & 5 Will. 4, c. 85, ss. 17, 19, and 3 & 4 Vict. c. 61, s. 13.

If any person licensed under stat. 1 Will. 4, c. 64, and this Act to sell beer or cider shall permit or suffer any wine or spirits, sweets or made wines, mead or metheglin, to be brought into his house or premises to be drunk or consumed there, or shall suffer any wine, spirits, sweets, mead, or metheglin, to be drunk or consumed in his house or premises by any person whomsoever, such person shall, over and above any excise penalty or penalties to which he may be subject, forfeit twenty pounds, to be recovered, levied, mitigated, and applied in the same manner as other penalties (not being excise penalties) are by this Act to be recovered, levied, mitigated, and applied (*d*). He is also liable to a penalty by the excise laws (*e*).

Every person under this Act licensed to sell beer by retail shall sell or otherwise dispose of all such beer by retail (except in quantities

(*a*) 9 Geo. 4, c. 61, s. 21.

(*b*) *R. v. Ashton*, 22 L. J. 1, *m*.

(*c*) 9 Geo. 4, c. 61, s. 20.

(*d*) 4 & 5 Will. 4, c. 85, s. 16.

(*e*) *Id.* s. 20.



less than a half pint) by the gallon, quart, pint, or half pint measure sized according to the standard, and shall also retail the same in a vessel sized according to such standard, and in default thereof he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered, within thirty days next after that on which such offence was committed, before two justices; and such penalty shall be over and above all penalties to which the offender may be liable under any other Act (a).

Every seller of beer, ale, and porter by retail having a licence under the provisions of this Act, who shall permit any person or persons to be guilty of drunkenness or disorderly conduct in the house or premises mentioned in such licence, shall for every such offence forfeit the respective sums following; and every person who shall in any way transgress or neglect, or shall be a party in transgressing or neglecting, the conditions and provisions specified in such licence, or shall allow such conditions or provisions to be in any way transgressed or neglected, in the house or premises so licensed, shall be deemed guilty of disorderly conduct, and every person so licensed who shall permit any such disorderly conduct shall for the first offence forfeit any such sum, not less than forty shillings nor more than five pounds, as the justices before whom such retailer shall be convicted of such offence shall adjudge; and for the second such offence any sum not less than five pounds nor more than ten pounds; and for the third such offence any sum not less than twenty pounds nor more than fifty pounds; and it shall be lawful for the justices before whom any such conviction for such third offence shall take place to adjudge, if they shall so think fit, that such offender shall be disqualified from selling beer by retail for the space of two years next ensuing such conviction, and also (if they shall so think fit) to adjudge that no beer shall be sold by retail by any person in the house or premises mentioned in the licence of such offender (b).

If any person so licensed as aforesaid shall knowingly sell any beer, ale, or porter made otherwise than from malt and hops, or shall mix, or cause to be mixed, any drugs or other pernicious ingredients with any beer sold in his house or premises, or shall fraudulently dilute or in any way adulterate any such beer, such offender shall for the first offence forfeit any sum not less than ten pounds nor more than twenty pounds, as the justices before whom such offender shall be convicted of such offence shall adjudge; and for the second such offence such offender shall be adjudged to be disqualified from selling beer, ale, or porter by retail for the term of two years, or to forfeit any sum of money not less than twenty pounds nor more than fifty pounds, at the discretion of the justices before whom such offender shall be adjudged guilty of such second offence; and if any offender convicted of such offence as last aforesaid shall during such term of two years sell any beer, ale, or porter by retail, either in the house and premises mentioned in the licence of such offender or in any other place, he shall forfeit any sum not less than twenty-five pounds nor

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(a) 4 & 5 Will. 4, c. 85, s. 12.

(b) 1 Will. 4, c. 64, s. 13.



more than fifty pounds, and shall be subject to a like penalty at any and every house or place where he shall commit such offence ; and if any person shall, at any time during any term in which it shall not be lawful for beer to be sold by retail on the premises of any offender, sell any beer by retail on such premises, knowing that it was not lawful to be sold, such offender shall forfeit any sum not less than ten pounds nor more than twenty pounds, as the convicting justices shall adjudge (c).

And no person licensed to sell beer or cider by retail under the said recited Acts or this Act shall have or keep his house open for the sale of beer or cider, nor shall sell or retail beer or cider, nor shall suffer any beer or cider to be drank or consumed in or at such house, at any time before the hour of five of the clock in the morning nor after twelve of the clock at night of any day in the week in the cities of London or Westminster, or within the boundaries of any of the boroughs of Marylebone, Finsbury, the Tower Hamlets, Lambeth, or Southwark, as defined by an Act passed in the second and third years of His late Majesty King William the Fourth, intituled An Act to settle and describe the Divisions of Counties and the Limits of Cities and Boroughs in England and Wales, in so far as respects the Election of Members to serve in Parliament ; nor after eleven of the clock within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed two thousand five hundred, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population, and returning a member or members to parliament, nor after ten of the clock in the evening elsewhere, nor at any time before one of the clock in the afternoon, nor at any time during which the houses of licensed victuallers now are or hereafter shall be closed, on any Sunday, Good Friday, Christmas Day, or any day appointed for a public fast or thanksgiving ; and if any such person shall keep his house open for selling beer or cider, or shall sell or retail beer or cider, at any time other than as hereinbefore prescribed and directed, such person shall forfeit the sum of forty shillings for every offence, and every separate sale shall be deemed a separate offence (d). Where he is enabled, by this section, to keep his house open until eleven, he may do so, though his licence state that he must close it at ten (e).

*Hours of opening on Sunday, &c.*] By stat 11 & 12 Vict. c. 49, s. 1, no licensed victualler, or person licensed to sell beer by retail to be drunk on the premises, or not to be drunk on the premises, or other person, in any part of Great Britain, shall open his house for the sale of wine, spirits, beer, or other fermented or distilled liquors, or sell the same on Sunday, before half-past twelve o'clock in the afternoon, or, where the morning Divine service in the church, chapel, kirk, or principal place of worship of the parish or place

(c) 1 Will. 4, c. 64, s. 13.

(d) 3 & 4 Vict. c. 61, s. 15.

(e) *R. v. Charlsworth et al.*, 20 L.J., 181, m.



shall not usually terminate by that time, before the time of the termination of such service, and that no licensed victualler or other person in England shall open his house for the sale of wine, spirits, beer, or other fermented or distilled liquors, or sell the same, on Christmas Day or Good Friday, or any day appointed for a public fast or thanksgiving, before the respective times aforesaid, except, in all the cases aforesaid, as refreshment for travellers: provided always, that nothing herein contained shall authorize the opening of any house for the sale of wine, spirits, beer, or other fermented or distilled liquors within the metropolitan police district, or any city, town, or place, at an earlier hour or time than is now allowed by law, where the opening of such house or such sale is now specially prohibited before any later hour or time than that hereinbefore mentioned.

And every person offending against this Act shall be liable upon a summary conviction for the same before any justice of the peace for the county, riding, division, liberty, city, borough, or place where the offence shall be committed, or in Scotland before any justice of the peace or sheriff or magistrate having jurisdiction in the place where the offence shall be committed, to a penalty not exceeding five pounds for every such offence; and every separate sale shall be deemed a separate offence (a).

By stat. 17 & 18 Vict. c. 79, s. 1, it shall not be lawful for any licensed victualler or person licensed to sell beer by retail to be drunk on the premises or not to be drunk on the premises, or any person licensed or authorized to sell any fermented or distilled liquors, or any person who by reason of the freedom of the mystery or craft of vintners of the city of London, or of any right or privilege, shall claim to be entitled to sell wine by retail to be drunk or consumed on the premises, in any part of England or Wales, to open or keep open his house for the sale of or to sell beer, wine, spirits, or any other fermented or distilled liquor between half-past two o'clock and six o'clock or after ten o'clock in the afternoon, on Sunday, or on Christmas day, or Good Friday, or any day appointed for a public fast or thanksgiving, or before four o'clock in the morning of the day following such Sunday, Christmas day, or Good Friday, or such days of public fast and thanksgiving, except as refreshments to a *bonâ fide* traveller or lodger therein.

It shall be lawful for any constable at any time to enter into any house or place of public resort for the sale of beer, wine, spirits, or other fermented or distilled liquor or liquors; and every person who shall refuse to admit or shall not admit such constable into such house or place shall be deemed guilty of an offence against this Act (b).

And every person who shall offend against this Act shall be liable, upon a summary conviction for the same before any justice of the peace for the county, riding, division, liberty, city, borough, or place where the offence shall be committed, to a penalty not exceeding five

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(a) 11 & 12 Vict. c. 49. s. 6.

(b) 17 & 18 Vict. c. 79, s. 3.



pounds for every such offence, and every separate sale shall be deemed a separate offence (c).

*Refusing to admit the constable.*] It shall be lawful for all constables and officers of police, and they are hereby authorized and empowered, to enter into all houses which are or shall be licensed to sell beer or spirituous liquors to be consumed upon the premises when and so often as such constables and officers shall think proper; and if any person having such licence as aforesaid, or any servant or other person in his employ or by his direction, shall refuse to admit or shall not admit such constable or officer of police into such house or upon such premises, such person having such licence shall for the first offence forfeit and pay any sum not exceeding five pounds, together with the costs of the conviction, to be recovered, within twenty days next after that on which such offence was committed, before one or more justices of the peace; and it shall be lawful for any two or more justices before whom any such person shall be convicted of such offence for the second time to adjudge (if they shall so think fit) that such offender shall be disqualified from selling beer, ale, porter, cider, or perry by retail for the space of two years next after such conviction, or for such shorter space of time as they may think proper (d).

### 3. Approver.

It is the duty of the magistrates in all cases to commit an accomplice, and not to admit him to bail, notwithstanding it may be intended to call the accomplice as a witness at the trial (e).

Where a person was in communication with the police, and duly reported to them the proceedings of a criminal conspiracy; *Held*, that such person when examined as a witness might refresh his memory from such reports, though they were taken down from his lips by an inspector of police, and then read over to and signed by the witness. A person employed by government to mix with conspirators, and so to detect their designs, does not require confirmation as an accomplice (f).

### 4. Assault.

*In ordinary cases, 251.*

*Assaults on females, or male children, 252.*

*In ordinary cases.*] An assault may be committed various ways. To lift up the hand in a threatening manner, so as to exhibit an intention coupled with an ability to do harm, is an assault, though no blow be struck, for it is an attempt or offer to do violence. So the act of setting a dog on to bite is an assault. So

(c) 17 & 18 Vict. c. 79, s. 4.

(d) 4 & 5 W. 4, c. 85, s. 7.

(e) *Rex v. Beardmore*, 7 C. & P. 497; 1 Arch. J. P. 119.

(f) *R. v. Mullins*, 12 J. P. 776. See also *R. v. Dowling*, ib. 678.



evidence that the defendant spit in the prosecutor's face was held sufficient to prove a battery, and in misdemeanors all are principals. So that although the defendant strike not a blow, yet if he use words of encouragement, as "Go it, go it," he is equally guilty with the striker (c).

If one man strikes another a blow, that other has a right to defend himself and to strike a blow in his defence; but he has no right to avenge himself; and if, when all the danger is past, he strikes a blow not necessary for his defence, he commits an assault and battery (d).

But the mere offer of A. to strike B. is sufficient to justify the latter's striking him; he need not stay till the other has actually struck him (e). But in this case B. should not repeat his blow towards A., unless he repeat or attempt to repeat the striking.

A husband may justify a battery in defence of his wife,—a wife in defence of her husband,—a parent in defence of his child,—a child in defence of his parent,—a master in defence of his servant,—and a servant in defence of his master (f). But a servant cannot justify beating another in defence of his master's son, because he is not a servant to the son (g).

In the cases of assault upon private persons, the magistrates can impose a penalty, not exceeding 5*l.*, and have no power to award imprisonment, neither can the fine be levied by distress; but in default of payment of such penalty, together with the costs, the defendant shall be imprisoned for any period not exceeding two calendar months, unless such fine and costs be sooner paid, 9 G. 4, c. 31, s. 27; and the decision of the magistrate is final, there being no appeal allowed under the Act. The whole of the penalty to be applied in aid of the county rate.

This statute expressly requires the complaint to be made by the party aggrieved. It is, however, the general opinion, that, even under this statute, the information may be laid by another person under particular circumstances; as in the case of an assault upon an infant of tender years, an idiot, &c., where there must be a failure of justice if the parent, guardian, or next friend of the party, is precluded from taking the necessary steps to bring the offender to justice (h).

*Assaults on females, or male children.*] When any person shall be charged before two justices of the peace sitting at a place where the petty sessions are usually held, or before any magistrate of the police courts of the metropolis sitting at any such police court, or before any stipendiary magistrate elsewhere, with an assault upon any female whatever, or upon any male child whose age shall not in the opinion of such justices or police or stipendiary magistrates exceed fourteen years, either upon the complaint of the party aggrieved or otherwise, it shall be lawful for the said justices or police or sti-

(c) See *Woolrych on Misdemeanors*, p. 179.

(d) See *Reg. v. Driscoll*, 1 Car. & M. 214.

(e) Bull, N. P. 18.

(f) 2 Roll. Abr. 546, D.; 1 Hawk. c. 60, ss. 23, 24.

(g) 1 Hawk. c. 6, s. 24.

(h) See Stone's P. P. S. 39.



pendiary magistrate, if the assault is of such an aggravated nature that it cannot in their or his opinion be sufficiently punished under the provisions of the statute ninth George the Fourth, chapter thirty-one, to proceed to hear and determine in a summary way, and if they shall find the same to be proved, to convict the person accused; and every offender so convicted shall be liable to be imprisoned in the common gaol or house of correction, with or without hard labour, for a period not exceeding six calendar months, or to pay a fine not exceeding (together with costs) the sum of twenty pounds, and in default of payment to be imprisoned as aforesaid, with or without hard labour, for a period not exceeding six calendar months, unless such fine and costs be sooner paid, and if the magistrate or magistrates shall so think fit shall be bound to keep the peace and be of good behaviour for any period not exceeding six calendar months from the expiration of such sentence; and such conviction shall be a bar to all future proceedings, civil or criminal, for or in respect of the same assault; and no person convicted under this Act shall be entitled to appeal against such conviction to the general quarter sessions of the peace, anything to the contrary in any statute notwithstanding (i).

#### 5. *Attainder.*

The difference between a man attainted and convicted is, that a man is said to be convicted before he hath judgment; as, if a man be convicted by verdict or confession, and when he hath his judgment upon the verdict or confession, that he is said to be attainted (k). That is to say, his blood has become "*attinctus*,"—tainted, stained, or corrupted; insomuch that by common law, in cases of treason or felony, his children or other kindred cannot inherit his estate, nor his wife claim her dower; and the same cannot be restored or saved but by Act of Parliament (l).

#### 6. *Bail.*

*In ordinary cases*, 253.

| *Bail in error*, 253.

*In ordinary cases.*] This subject has been very fully explained by one of Jervis's Acts (11 & 12 Vict. c. 42, ss. 23, 24), which the reader will find *ante*, pp. 173–177.

*Bail in error.*] *By stat. 8 & 9 Vict. c. 68.—An Act to stay Execution of Judgment for Misdemeanors upon giving Bail in Error, it is enacted:—*

Sect. 1. *Execution on judgments for misdemeanors stayed or suspended by writ of error and bail thereon.*] That it is expedient to make provision for staying the execution of judgment upon prosecution for misdemeanor while a writ of error is depending to reverse

(i) 16 Vict. c. 30, s. 1.

(k) 1 Inst. 390.

(l) Inst. 321, b.



such judgment, and enacts, that in every case of judgment, whether given before or after the passing of this Act for a misdemeanor, where the defendant or defendants shall have obtained a writ of error to reverse such judgment, execution thereupon shall be stayed until such writ of error shall be finally determined; and in case the defendant or defendants shall be imprisoned under such execution, or any fine shall have been levied, either in whole or in part, in pursuance of such judgment, the said defendant or defendants shall be entitled to be discharged from imprisonment, and to receive back any money levied on account of such fine from the person or persons in whose possession the same shall be, until such final determination as aforesaid: provided always, that no execution upon any such judgment shall be stayed unless and until the defendant or defendants shall become bound by recognizance, to be acknowledged before one of the judges of Her Majesty's court of Queen's Bench, or one of the commissioners appointed to take special bail in actions depending in the superior courts, with two sufficient sureties, to be approved of by such judge or commissioner, in such sum as such judge or commissioner shall direct, to prosecute the writ of error with effect, and in case the judgment shall be affirmed forthwith to render the said defendant or defendants to prison according to the said judgment, where imprisonment shall have been adjudged; and every such recognizance shall, after justification of bail, be filed of record in the said court of Queen's Bench, in like manner and upon payment of the like fees as in the case of other recognizances filed in the crown office of that court; and the judge of the said court of Queen's Bench and the said commissioner shall have the like powers in respect of the justifying such bail in error, and the examination of the sureties, and the like rules shall apply as in respect of special bail in actions depending in such court; provided always, that in the case of any defendant under legal disability, it shall be sufficient if two persons, to be approved of by such judge or commissioner, shall become bound by recognizance on the behalf of such defendant, to be acknowledged and conditioned as aforesaid.

2. *Certificate of recognizance being duly filed.*] That the clerk of the crown in the said court of Queen's Bench shall, for the purposes hereinafter mentioned, make out and deliver to the defendant or defendants, or his or their lawful attorney, certificates in writing under his hand that such recognizance is duly filed of record in such court, upon payment of the like fee as for other certificates delivered at the crown office; and any such certificate, when duly verified by affidavit to be made before one of the judges of the superior courts of common law, or a commissioner duly authorized, shall be a sufficient warrant to every gaoler or other person having custody of such defendant or defendants in execution of such judgment to discharge him or them out of custody, and also to every person having in his possession the whole or any part of any fine levied in execution of such judgment, to authorize and require the repayment thereof to the defendant or defendants; but no person who shall have received any such money, and have paid it over to any other person, according to the course of the exchequer, shall be



liable to repay to the defendant or defendants any part of the money so paid over.

3. *Time of imprisonment, how reckoned.*] That where judgment upon such writ of error shall be affirmed, and imprisonment shall have been adjudged, the period for its continuance in pursuance of such judgment, if such imprisonment shall not have commenced under such execution, shall be reckoned to begin from the day when such defendant or defendants shall be in actual custody under such judgment; and if the defendant or defendants shall have been discharged from imprisonment in manner hereinbefore provided, such defendant or defendants shall be liable to be imprisoned for such further period as, with the time during which such defendant or defendants may already have been imprisoned under such execution, shall be equal to the period for which such defendant or defendants was or were so adjudged to be imprisoned as aforesaid.

4. *Payment and recovery of a fine not to prevent imprisonment till fine again paid.*] Declares and enacts, that when the judgment shall have been for payment of a fine, and imprisonment until such fine be paid, either with or without imprisonment for a certain time, and the defendant or defendants shall have paid the fine, or the same or any part thereof shall have been levied, and shall have been received back under the provisions hereinbefore contained, and the judgment upon writ of error brought shall be affirmed, the defendant or defendants shall not be entitled, by reason of such payment as aforesaid, to be discharged from imprisonment, notwithstanding the expiration of any certain time of imprisonment for which the original judgment shall have been given, until the fine shall be again paid.

5. *Writ of error to be quashed in case of delay or neglect to prosecute it.*] That if the court in which any such writ of error shall be pending shall, upon motion in that behalf, decide that the defendant or defendants by whom it shall be brought has or have wilfully delayed or neglected to prosecute the same with effect, it shall be lawful for such court to order the writ of error to be quashed, and thereupon the defendant or defendants who brought such writ of error shall be liable to execution upon the judgment.

*Also by stat. 16 & 17 Vict. c. 32,—An Act to make further Provision for staying Execution of Judgment for Misdemeanors upon giving Bail in Error.*

Sect. 1. *No execution to be stayed or defendant discharged from custody till recognizance given for defendant's personal appearance, except when writ brought by the Attorney-general.*] In every case in which a writ of error shall be brought to reverse any judgment for misdemeanor, except when the same shall be brought by Her Majesty's attorney-general, no execution thereupon shall be stayed, nor shall any defendant be discharged from imprisonment as to such execution, unless and until he shall become bound by recognizance, to be acknowledged in manner in the said Act mentioned, to prosecute the writ of error with effect, and personally to appear in the court wherein such writ may be returnable on the day whereon judgment shall be given upon the said writ of error, and also, if so



ordered by the court or by a judge thereof, four days' notice being given either to the defendant or his attorney or to the bail personally, or by leaving the same at his or their last known place of abode on the days and times appointed for any proceeding upon the said writ, and so from day to day, and not to depart that court without leave, and forthwith to render the said defendant to prison, according to the said judgment, in case the said judgment shall be affirmed.

2. *Where default made in personal appearance of defendant on the argument, court may order recognizance to be estreated, and writ of error to be quashed.*] In every case in which a defendant shall make default in prosecuting such writ of error with effect, or in personally appearing in the court of error upon any proceeding to be had upon such writ of error as aforesaid, it shall be lawful for the said court to order the said recognizance to be estreated into the court of Exchequer in a summary way, and without the issuing of any writ of *scire facias* in that behalf, and also to order the said writ of error to be quashed, without any argument being had thereupon; and in every such case the defendant shall forthwith be liable to execution upon the judgment.

3. *No judgment to be given for defendant for want of a joinder in error, except by order of the court in open court; and court may examine record, and give judgment, though no assignment of errors filed.*] Whenever any writ of error shall be brought, under the provisions of the said Act, for reversing any judgment in misdemeanor, and error shall be assigned thereon, no judgment of reversal shall be entered, either for want of a joinder in error or otherwise, without a special order of the court in which such writ of error shall be pending, pronounced in open court; and upon a certificate signed by or on behalf of the attorney or solicitor-general, that notice has been given to one of them of such intended application, and in the event of there being no joinder in error, such court of error may proceed to examine the record in error, and may give such judgment thereon as the court from which error is brought ought to have done, although no joinder in error may have been filed.

4. *Where judgment affirmed, defendant, if present in court, may be committed in execution.*] In every case in which a defendant shall personally appear in court upon any proceeding had upon any such writ of error, and judgment thereupon shall be affirmed, or such writ of error shall be quashed, it shall be lawful for such court of error forthwith to commit the said defendant to the keeper of the Queen's prison, and to order the said keeper to deliver such defendant to the keeper of the gaol or prison in which he may have been adjudged to be imprisoned; and the said keeper of the Queen's prison shall thereupon deliver such defendant to the keeper of such gaol or prison, and the keeper of such last-mentioned gaol or prison shall thereupon cause such defendant to be kept in safe custody in such gaol or prison, in pursuance of and in execution of the said judgment.

5. *Where recognizance has been estreated, or judgment affirmed, or writ of error quashed, a judge may issue warrant to take defendant, and render him to prison in execution.*] And whenever it shall be made to appear to any one of the judges of the superior courts of



record at Westminster, either by affidavit or by certificate of the proper officer of the court of error, that the recognizance of a defendant given under the provisions of this Act hath been ordered to be estreated, or that judgment upon the said writ hath been affirmed, or that such writ of error hath been quashed, and that default hath been made by the space of four days in rendering the defendant to prison in execution of the judgment, it shall be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such defendant to be apprehended, and conveyed to the gaol or prison in which such defendant may have been adjudged to be imprisoned, pursuant to and in execution of the judgment given against such defendant.

6. *How time of imprisonment shall be reckoned when defendant rendered in execution.*] In every case in which a defendant shall be committed by any court of error in execution of the judgment given against such defendant, and in every case in which a defendant shall, by virtue of any warrant or in other manner, be rendered to prison in execution of such judgment, the imprisonment of such defendant (if imprisonment shall not have commenced under such execution) shall be reckoned to begin from the day when such defendant shall be in actual custody in the gaol or prison in which he may have been adjudged to be imprisoned under such judgment; and if the defendant shall have been discharged from imprisonment on giving bail in error, as is hereinbefore mentioned, such defendant shall be imprisoned for such further period in the same prison as, with the time during which such defendant may already have been imprisoned under such execution, shall be equal to the period for which he was adjudged to be imprisoned as aforesaid.

7. *If default be made in rendering defendant to prison, and warrant be issued against him, he shall pay the costs and charges of the render.*] Whenever default shall have been made in rendering a defendant to prison in execution of a judgment for misdemeanor, and a warrant shall have been issued against such defendant to enforce such render to prison, according to the provisions of this Act, such defendant shall be liable to pay the costs and charges of such render; and if the prosecutor shall, before the expiration of the defendant's imprisonment, have caused the amount of such costs and charges to be ascertained by one of the masters or the assistant master on the crown side of the court of Queen's Bench, and shall have left with the said defendant, and with the keeper of the prison or his deputy, a certificate, under the hand of such master or assistant master, of the amount of such costs so ascertained, then and in every such last-mentioned case the defendant shall not be discharged out of custody until such costs and charges have been paid, or until an order has been made by the court for the relief of insolvent debtors or of bankruptcy for such discharge.

8. *Where default made by defendant in proceeding to trial in Queen's Bench, court may estreat recognizance without scire facias.*] And whereas in cases of default made by parties in performing the conditions of recognizances into which they may have entered to proceed to the trial of issues joined upon any indictment or information filed in Her Majesty's court of Queen's Bench it hath



been the usage and practice to enforce the forfeiture of such recognizances by writ of *scire facias*, and the course of procedure by *scire facias* in such cases is dilatory, inconvenient, and expensive; be it therefore enacted, that in every such case of default it shall be lawful for the said court, or a judge thereof, to call upon the parties who have entered into such recognizance, by rule or order to show cause why such recognizance should not be estreated into the Exchequer, and thereupon, unless cause shall be shown to the satisfaction of the said court or judge, in excuse of such default, such court or judge may order such recognizance to be estreated into the Exchequer.

### 7. *Burglary.*

Burglary is a felony at common law, in breaking and entering a dwelling-house of another in the night with intent to commit some felony within the same, whether the felonious intent be executed or not (*a*).

There must be an actual or constructive breaking into the house; where a window was a little open, and not sufficiently so as to admit a person, and the prisoner pushed it wide open and got in, this was held to be no sufficient breaking (*b*).

Lord Hale says, opening the casement, or breaking the glass window, picking open the lock of a door, or putting back the lock, or unlatching the door which is only latched, amount to an actual breaking (*c*). When the prisoner effected an entry by pulling down the upper sash of a window which had not been fastened the judges held this to be burglary (*d*).

But entering by a trap-door, covering a cellar, which was merely kept in its place by its own weight, and which had no fastenings, is not a sufficient breaking to constitute a burglary (*e*).

An entry is deemed complete if the thief, breaking the house, enter with his body, or his arm, or his foot; but if he barely break the house without any such entry, this is no burglary (*f*).

Or even the mere introduction of the offender's finger through a pane of glass, broken by the prisoner for the purpose of undoing the window latch (*g*).

The breaking and entering must be in the night-time. 4 Bla. Com. 224; and by the 7 W. 4 & 1 Vict. c. 86, s. 4, it is enacted, That so far as the same is essential to the offence of burglary, the night shall be considered and is hereby declared to commence at nine o'clock in the evening of each day, and to conclude at six o'clock in the morning of the next succeeding day.

(*a*) 4 Bla. Com. 227.

(*b*) *R. v. Smith*, Car. C. L. 293.

(*c*) 1 Hale, 552

(*d*) *R. v. Haines & Harrison*, R. & R. 451.

(*e*) *R. v. Lawrence*, 4 C. & P. 231;

*R. v. Russell*, R. & M. 337.

(*f*) 2 East's P. C. 490.

(*g*) *R. v. Bailey*, R. & R. 341;  
*R. v. Davis*, R. & R. 499.



## 8. Cattle, Impounding.

A case is reported in 1 C. & K. 682, of great importance to magistrates and others:—

The case is *Machell v. Ellis*, and it is thereby decided that the fourth section of the 5 & 6 W. 4, c. 59, (Cruelty to Animals' Act<sup>(h)</sup>), does not apply to cattle confined under *all* circumstances, but only to cattle impounded or confined in cases where the distrainer had a right to distrain, or at least some colour for the distress. The fourth section of the 5 & 6 W. 4, c. 59, enacts, "That every person who shall impound, or confine, or cause to be impounded or confined, any horse, ass, or other cattle, or animal in any common pound, open pound, or close pound, or in any inclosed place, shall find, provide, and supply such horse, &c., daily with good and sufficient food and nourishment for so long time as such horse, &c., shall remain and continue so impounded or confined as aforesaid." And power is there given to the person so supplying such food and nourishment, to recover double the value of the food and nourishment so supplied before a justice; or if he think fit, instead thereof, to sell the animal and apply the produce in discharge of the value, &c.; and the fifth section authorizes persons to enter pounds for the purpose of feeding cattle so impounded or confined; and the sixth section inflicts a penalty on parties neglecting to feed cattle so impounded or confined. *Machell v. Ellis* was an action of trover for a colt. It was proved that the colt was turned into Hainault forest, in Essex, in which forest the plaintiff had a right of common, and that it was afterwards confined in the yard of the defendant's farm, at which the defendant did not reside, and that afterwards it was, by order of the defendant's bailiff, sold by auction in Romford market for 5*l.* 12*s.* There was no evidence to connect the defendant with any of those facts, nor was there any evidence of any distress, or of how or why the colt came to be put in the yard at the defendant's farm. After reserving the point of conversion by the defendant, a verdict was found for the plaintiff, by direction of the learned judge, Pollock, C. B., with damages, 5*l.* 12*s.* His lordship said, in the course of the argument: "The argument of Mr. Deedes (counsel for the defendant) comes to this, that if a person confines another's cattle, no matter why, and without any question of impounding, he is bound to supply food and charge for it, and at seven days' end, may sell the cattle. Any thing so foreign to all notions of justice it is hard to conceive; but I think that the latter words of the fourth section, which authorizes one justice of the peace, 'within whose jurisdiction such cattle or animal shall have been so *impounded*, and supplied with food,' to enforce payment for it, and which authorizes the sale of the cattle, after the expiration of seven clear days, from the time of impounding the same, show that it applies to cases of impounding

(h) This Act has been repealed, and stat. 12 & 13 Vict. c. 92 (*post* p. 256) substituted for it. But the 5th section

of the latter Act is the same as the 4th section above mentioned.



only; and to bring the case within this Act of Parliament, it ought to be shown that the party had a right to distrain, or at least some colour for it." It is therefore from this desirable that magistrates inquire minutely before they attempt to award the value of the food under sect. 2, whether the distress has been legally made or not, and if not, not to entertain the case.

It seems that under sect. 4, the person who is bound to supply food to impounded cattle is the distrainer or person at whose suit they are impounded, and not the pound-keeper: but if the pound-keeper supplies the food at the request of the distrainer, or the distrainer joins with the pound-keeper, in a subsequent sale of the cattle, under this Act, 5 & 6 W. 4, c. 59, the pound-keeper and the distrainer are for this purpose to be considered as one (*b*).

The distrainer who supplies the food, may either apply under the fourth section to a magistrate to allow any sum not exceeding double the value of the food, or may sell the cattle; but no magistrate ought to allow more than the actual value of the food, if the owner of the cattle was willing to supply the food himself. If the cattle be sold under the Act, the distrainer can only get the single value of the food, and not the amount of the damage for which the cattle were distrained, as all the overplus beyond the value of the food and the expense of the sale is to be returned to the owner of the cattle; and by sect. 5, any person or persons whomsoever may feed cattle impounded, if such cattle be without food for twenty-four hours; but this section does not give a right to any payment, it merely allows charitable persons to supply food to impounded cattle, without being liable to an action for doing so (*c*).

A mare was distrained damage-feasant by A., and detained in the pound by the pound-keeper B.; for several days, B. supplied the mare with food while in the pound, and A. and B. joined in selling the mare for the keep: held, in an action of trover by the owner of the mare against A. and B., that if they *bonâ fide* and honestly intended to sell the mare under the provisions of sect. 4 of this Act, they were entitled to notice of action, and to have the venue laid in the proper county; but on these facts the judge would not nonsuit, but left it to the jury to say whether the defendant meant *bonâ fide* to act upon the provisions of that statute; and that if they did, the defendants were entitled to their verdict (*d*).

I would remark here, should the cattle be sold for the single value of the food under sect. 4, they must not be sold until the expiration of seven clear days from the time of impounding the same, and must be sold in some public market, after having given three days' notice by printed bills publicly exposed, and must be sold for the most money that can then be got for the same, and to apply the produce in discharge of the single value of such food as has been supplied to such cattle, and the expense of and attending such sale, returning the overplus (if any) to the owner of such cattle or animal.

(*b*) *Mason v. Newland*, 9 Car. & P. 575.

(*c*) See 1 Arch. J. P. p. 222.

(*d*) *Mason v. Newland*, 9 Car. & P. 575.



It would not be safe to sell the cattle, if the value of the food and the pounder's fee be offered by the owner, although the distrainer is not bound to deliver up such cattle, unless the damage also were tendered. The sale need not be by auction (*e*).

A man may distrain beasts, damage-feasant, that is, doing damage or trespassing upon his land; for all chattels whatever are distrainable damage-feasant, it being but natural justice, that whatever doth the injury, should be a pledge to make compensation for it (*f*). If a man take cattle and put them into the land of another man, the tenant of the land may take those cattle, damage-feasant, though the owner was not privy to the cattle being damage-feasant, and he may keep them against the true owner, till satisfaction of the damages (*g*). If a man come to distrain, and see the beasts in his ground, and the owner chase them out on purpose before the distress taken, the owner of the soil cannot distrain them (*h*). For distress, damage-feasant, is the strictest distress that is, and the thing distrained must be taken in the very act, for if the goods are once off, though on fresh pursuit, the owner of the grounds cannot take them (*i*). If ten head of cattle were doing damage, a man cannot take one of them and keep it, till he be satisfied for the whole damage, but for its own damage only; but he may bring an action of trespass for the rest (*k*). If a man hath a common for ten cattle, and he puts in more, the surplusage above ten days may be taken, damage-feasant (*l*). But this must be when the number is absolutely certain, as for ten, twenty, or thirty cattle, without any relation to the quantity of land, and not where he claims for so many cattle for such a number of acres; for in the former case the over-charge is clear and self-evident, but in the latter it depends upon the number of acres, and requires a medium to determine the number of cattle; that is, an admeasurement of the land. For where the question depends upon a collateral fact, or upon a matter of judgment, the party interested can never be a competent judge in his own cause, and the court said the right of distraining seemed to turn upon this, that wherever there is a *colour* of *right* for putting in the cattle of a commoner he cannot distrain, because it would be judging for himself in a question that depends upon a more competent inquiry; but where cattle are put upon the common, *without* any colour or pretence of right, the commoner may distrain them; and therefore he may distrain the cattle of a stranger (*m*). When cattle have trespassed on a party's land, it is not advisable to distrain where his title to the *locus in quo* is doubtful; the best course is to proceed by action (*n*).

If two persons have distinct and independent rights in the same close, and the cattle of the one in the fair exercise of his right, injure that of the other, the remedy of the latter, if any, is by action,

(*e*) See *Justice of the Peace*, vol. viii, p. 763.

(*f*) Gilbert's Law of Distress, 24, 38; Bla. Com. 6.

(*g*) 1 Roll. Abr. 665; Roll. Rep. 449.

(*k*) Co. Lit. 161; 2 Bac. Abr. 354.

(*i*) *Vaspor v. Edwards*, 12 Mod. 661.

(*h*) Id. 660.

(*l*) 1 Roll. Abr. 665.

(*m*) *Hall v. Harding*, 4 Burr. 2462; Blac. Rep. 673, S.C.

(*n*) 1 Saund. 346; e.n.



not distress. Thus, where A. having the exclusive right to dig stone in a certain close, avowed distraining the cattle of B., who had the exclusive right of pasture there as damage-feasant, for having broken the stones, B. pleaded that there was no fence to keep them off, nor did A. guard or otherwise protect the same. A. replied that he was not bound to fence; and on demurrer, the replication was held bad (o).

If turves be laid on a common, it seems they may be distrained by a commoner, as damage-feasant (p). It seems also that the owner of land might after a reasonable time, distrain as damage-feasant, tithes set out and not removed.

If cattle be put into a man's pasture for a week, and he afterwards gives notice to the owner of them, that he will keep them no longer, if they be not removed, he may distrain them as damage-feasant (q).

In a distress of cattle damage-feasant, they can be distrained only for the damage done at the one time when they are distrained. So that if beasts trespass on the land on one day, and then go off without being seized, and trespass on it again the next day, and are then taken, they cannot be detained for the damage done on both days, but only for that done on the day on which they were distrained. As to a tender, it is said, that in the case of a distress damage-feasant made by a bailiff or servant, it is not sufficient to tender the amends before impounding, to the person distraining, but that such tender should, if possible, be made to the owner of the land himself; unless, indeed, the distress be made by the bailiffs of a manor, who may be considered as authorized, not only to make the distress, but finally to dispose of it; but there seems no valid reason why the same rule should not be applicable in this respect to every distress for whatever cause; and the only real question to be considered appears to be, whether the person actually distraining is the competent agent of the person entitled, as well to settle the distress as to distrain, or for the latter purpose only.

Thus, where a man's wife, who was proved to have been in the habit of acting as his agent in such matters, made a distress of cattle damage-feasant in his absence, a tender of amends to her was held to be sufficient (r).

As to what is such an impounding that the tender comes too late, it has been held in a late case, that where the cattle had been put into a private pound, but the distrainer admitted that they were about to be forwarded to the public pound, a tender of satisfaction made whilst they were in the private pound was not too late. Where a tender is made after the impounding, if the distrainer think proper, he may, of course, accept the amends, and let the distress out, but he is not bound so to do (s).

No particular form is required in making the distress. No notice

(o) *Churchill v. Evans*, 1 Taunt. 529.

(p) *Broomhall v. Norton*. Sir T. Jones, 193.

(q) Bullen's Law of Distress, p. 231.

(r) *Browne v. Powell*, 4 Bing. 230;

Bullen's Law of Distress, p. 236.

(s) Bullen's Law of Distress, p. 236.



is necessary. The cattle or things seized should be driven or taken to be impounded; and as this kind of distress, like all others, is within the statute of 1 & 2 Phill. and M. c. 12, directing the distress to be impounded in a pound within three miles from the place where it is taken, and in the same county, that the rule must be strictly observed.

It may be impounded either in the private pound of the distrainer on the premises, where taken, or elsewhere, or in a public pound (*t*).

### 9. Chimney Sweepers.

By 3 & 4 Vict. c. 85, s. 2, any person who shall compel, or knowingly allow any child or young person under the age of 21 years to ascend or descend a chimney or enter a flue, for the purpose of sweeping, cleaning, or coring the same, or for extinguishing fire therein, shall be liable to a penalty of not more than 10*l.* nor less than 5*l.*, before two justices of the peace, to be levied by distress and sale, one half to the informer and the other half to the overseers of the poor of the parish where such offence was committed; in default of distress to be imprisoned for not more than two months, with or without hard labour.

It may be observed here that the employer, as well as the employed (who may be master of the boy), is liable to such penalty as is already described.

### 10. Coin.

*Counterfeiting*, 263.  
*Uttering, &c.* 264.

*Copper Coin*, 265.

*Counterfeiting.*] By stat. 2 W. 4, c. 34, s. 3, if any person shall falsely make or counterfeit any coin, resembling, or apparently intended to resemble, or pass for any of the king's current gold or silver coin, every such offender shall in England be guilty of felony, and liable to be kept in penal servitude for life. And every such offence shall be deemed complete, although the coin so made or counterfeited shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected.

It is not necessary to prove that the counterfeit coin was uttered, or attempted to be uttered (*u*).

It is presumed that the metal must be in some forward state of manufacture, or show some material resemblance of the king's coin (*v*).

By section 4 of the same statute, colouring, gilding, silvering, or casing over pieces of metal with intent to make them pass for gold or silver coin of the realm, shall be in England deemed guilty of felony, and liable to be kept in penal servitude for life.

(*t*) Bullen's Law of Distress, p. 237.

(*v*) *R. v. Harris and another*, 1

(*u*) 1 Hale, 215, 229; 1 East, P. C. Leach, 135.



By section 5, any person who shall impair, diminish, or lighten any of the king's current coin, gold or silver, with intent to pass the same, shall in England be guilty of felony, and liable to be kept in penal servitude for fourteen years.

By section 6, if any person shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for any of the king's current gold or silver coin, at a lower value than its denomination; or if any person shall import counterfeit coin from beyond the seas, knowing the same to be counterfeit, shall in England be guilty of felony, and be liable to be kept in penal servitude for life.

*Uttering, &c.*] By section 7 of the 2 W. 4, c. 34, If any person shall tender, utter, or put off any false or counterfeit coin, as aforesaid, knowing the same to be false, shall in England be guilty of a misdemeanor, and liable to be imprisoned for one year, and if such person have in his possession at the time of uttering, one or more other peace or pieces of counterfeit coin, or shall either on the day of uttering, or within the space of ten days then next ensuing, utter any false or counterfeit coin, knowing the same to be false or counterfeit, shall in England be guilty of a misdemeanor, and be liable to be imprisoned for two years; and for every second offence after a previous conviction, shall be guilty of felony, and liable to be transported for seven years.

Where a Jew boy received a good shilling for fruit, and he put it into his mouth, under pretence of trying if it were good, and then taking out of his mouth a bad shilling instead of it, returned it to the purchaser of the fruit, saying, that it was not good, was holden to be an uttering within the meaning of the statute 15 Geo. 2, c. 28 (*w*).

If a man utter one bad shilling, and other bad shillings are found upon him, this would bring him within the description of a common utterer (*x*).

If two persons jointly prepare counterfeit coin, and then utter it in different shops, apart from each other, but in concert, and intending to share the proceeds, the utterings of each are the joint utterings of both, and they may be convicted jointly (*y*).

By section 8 of the 2 W. 4, c. 34, "If any person shall have in his custody or possession *three* or more pieces of false or counterfeit coin, knowing the same to be counterfeit, and with intent to pass the same, shall be guilty of a misdemeanor, and be liable to be imprisoned for not more than three years, and for a second offence after a previous conviction shall be deemed guilty of felony, and liable to be kept in penal servitude for life." By the interpretation clause of the 2 W. 4, c. 34, s. 21, "If any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in any dwelling-house or other building, lodging, apart-

(*w*) *R. v. Franks*, 2 Leach, 445, 786.

(*y*) *Reg v. Hurse*, 2 M. & R. 360.

(*x*) *Ball's case*, 1 Campb. 325. Phil.  
on Evid. 137.



ment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this Act."

And by a recent case, where two persons were taken into custody together, one of them having on him sixteen pieces of bad coin and the other only two pieces, the judges held that the person who had only the two pieces might be convicted as well as the person who had the sixteen pieces (z).

Sect. 10. Making, mending, or having in possession any coining tools, such as any puncheon, counter-puncheon, matrix, stamp, die, pattern or mould, in or upon which there shall be made or impressed, or which will make or impress, or which shall be intended to make or impress a figure, stamp, or apparent resemblance of both or either of the sides of any of the king's current gold or silver coin, or any part of both or either of such sides, shall be guilty of felony and liable to be kept in penal servitude for life.

To convict a prisoner upon an indictment under the 2 W. 4, c. 34, s. 10, charged with having in his possession "one mould, upon which was impressed the figure and apparent resemblance of the obverse side of a shilling," Patteson, J., held that the jury must be satisfied that at the time the prisoner had it in his possession the whole of the obverse side of the shilling was impressed on the mould (a).

But on a second indictment against the same prisoner, under the above section, for making a mould "intending to make and impress the figure and apparent resemblance" of the obverse side of a shilling, the same learned judge ruled that it was sufficient to prove that the prisoner made the mould and a part of the impression, though he had not completed the entire impression (b).

The words, "figure, stamp, or apparent resemblance," do not mean an exact resemblance; but if the instrument will impress in point of fact such a resemblance as will impose upon the world, it is sufficient (c).

*Copper Coin.*] By 2 W. 4, c. 34, s. 12, if any person shall falsely make or counterfeit any coin resembling, or apparently intended to resemble, or pass for any of the king's current copper coin, or make or mend, or begin, or proceed to make or mend, or buy or sell, or shall knowingly and without lawful excuse have in his custody or possession any instrument, tool, or engine adapted and intended for such counterfeiting, or if any person shall buy, sell, receive, pay, or put off any such coin, at a lower rate of value than its denomination imports, every such person shall be guilty of felony, and be liable to be kept in penal servitude for seven years. Any person knowingly having in his possession three or more such pieces with intent to

(z) *R. v. Williams*, 1 Car. & M. 259;  
4 Arch. J. P. 80, 81.

(a) *Foster's case*, 7 C. & P. 494.

(b) 7 C. & P. 495.

(c) *Ridgeley's case*, 1 East, P. C. 171;  
1 Leach, 189.



utter the same, or shall tender, utter, or put off such pieces, shall be guilty of a misdemeanor and be liable to be imprisoned for one year.

The coin must be in a fit state to be issued.

### 11. *Conspiracy.*

Conspiracy is a combination and agreement by persons to do an illegal act, or to effect a legal purpose by illegal means, and requires more than one person to be concerned in its commission, and cannot be maintained against husband and wife, they being but one person in law (*d*).

De Berenger and others were convicted of conspiracy by spreading reports of the death of Bonaparte during the war and the likelihood of immediate peace, such report being raised for the purpose of affecting the price of the funds (*e*).

It has been held that to fabricate shares in addition to a limited amount already issued on behalf of a company, is indictable in this manner, although there was originally an imperfection in the formation of the company (*f*).

If a workman combines with others to use any threat or menace to induce people to come into his terms, that combination as to wages, which by itself is correct, becomes the medium of a conspiracy (*g*).

A conspiracy to extort money from an individual is punishable, as conspiring to charge him with being the father of a bastard child (*h*).

Powell, J., said, If a woman pretending herself to be with child, does with others conspire to get money, and for that purpose goes to several young men, and says to each that she is with child by him, and that if he will not give her so much money she will lay the bastard to him, and by those means gets money of them, this is indictable. Holt, C. J., added, I agree to this, if she goes to several, but not to one particular person (*i*).” It is added in *Mr. Granger’s edition of Roscoe*, that from the last observation of Holt, C. J., it appears that Powell, J., was speaking of an indictment for *cheating*, and not as might be supposed, from using the words, “*does with others conspire*,” of an indictment for conspiracy.

If evidence in support of an indictment for a conspiracy shows that a felony has been committed in the endeavour to carry out the conspiracy, the defendant is not entitled to be acquitted if the object of the conspiracy was felonious. If the gist of the offence charged in an indictment is a conspiracy, the fact that the conspiracy is alleged to have been carried out by acts amounting to a felony is not a ground for arresting the judgment. An indictment charged that the defendants, being in the employ of the prosecutor, a dyer, unlawfully conspired to use the dyeing materials on articles not

(*d*) 1 Hawk, c. 72, s. 8.

(*e*) *R. v. De Berenger*, 3 M. & S. 67.

(*f*) *R. v. Mott*, 2 C. & P. 521.

(*g*) *R. v. Robinson and another*, Leach, 37; 3 Burr. 1439.

(*h*) *Kimberly’s case*, 1 Lev. 62.

(*i*) *Glanville’s case*, Holt, 354.



intrusted to them for dyeing, and not (as was permitted by the prosecutor) belonging to themselves, and so to defraud their employer of profit; and that in pursuance of such conspiracy the defendants, without leave of the prosecutor, received materials which they dyed with the vats and dye of the prosecutor for their own purposes. The evidence showed that the defendants had used the dye of the prosecutor to dye goods for various persons for their own profit. *Held, first*, that the defendants were not entitled to be acquitted on the ground that the evidence showed a felonious taking of the dye, and therefore the merger of the misdemeanor into a felony. *Secondly*, that the indictment was not bad in arrest of judgment (*k*).

## 12. Coroner's Inquest.

1. A coroner's inquest should be held in all cases of violent death,—casualties by which death ensues, sudden deaths, persons found dead, persons dying in prison, lunatics who die by suicide, and persons committing suicide,—for the purpose of inquiring into and ascertaining the manner of the death. If a parish officer, or any one in authority, knowingly suffer any person to be buried who died in the manner mentioned in any of the above cases, he will be liable to a criminal prosecution, and the body of the person buried must be taken up again for inquiry.

2. In all cases of violent and unnatural deaths in houses or other buildings, the coroner shall be sent for, if possible, whilst the body remains in the same position as when the party died.

3. The duty of the beadle or other peace officer, when any of the above cases occur in his own knowledge, or when he has received information of and ascertained the fact, is to apply immediately to the coroner for a warrant or precept to the constable of the parish, or of the next four, five, or six parishes, to summon a jury.

4. A constable not executing or making a return to this warrant, is liable to be fined.

5. If a body has been interred on which an inquest ought to have been held, on application to the coroner, he will grant his warrant for the disinterment.

6. The name of the deceased should be correctly ascertained, if it be possible, and the nature of the death, whether by accident, suicide, or otherwise, and stated to the coroner, for his information, in issuing his warrant.

7. The officer should take charge of, and produce on the inquest, any papers or other property that may be found on searching the body of any one unknown, that may be found dead in the street, highway, or other by-place; and he should act in the same manner when the person is known.

8. He should also produce or cause to be exhibited to the court, any weapon or instrument that may be found, supposed to have been the means of death.

9. When death is caused by any waggon, cart, or carriage, it

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(*k*) *Reg. v. Button*, 13 J. P. 20.



should be identified by its number, or by the name and residence of the owner and driver, if they can be ascertained.

10. The beadle, if not himself a constable, must forward the coroner's warrant to the constable of the district where the dead body lies, to summon a jury.

On the receipt of this warrant, the constable must, without loss of time, serve a summons on twenty-four, or not less than twelve house-keepers of the parish, precinct, or liberty, and on no consideration are the jury or any of them to be of kin to the deceased, nor interested for any party charged or suspected in the cause of the death of the deceased.

The summons should, if possible, be served personally; if not, it should be left with some one of the family.

The witnesses should be summoned in the same manner, and kept out of court until called in separately to give evidence. When the coroner arrives, the officer must return the warrant to him, containing the list of the names in full, of the persons he has summoned. He should remain in court and prevent interruption, and obey all the lawful orders of the coroner.

The officer will be ordered by the coroner to open the court. The names of the jurymen having been called, and a foreman appointed, those persons who have answered must stand up to be sworn, as jurors, and the officer should prevent any one being sworn who attends as a substitute: it frequently occurs that such persons improperly present themselves.

The officer has charge of the jury, and should see that all of them accompany him to view the body. Should they retire, he must keep charge of them, but not to interfere nor allow any one else to do so; a warrant will be given to the officer by the coroner for the burial of the body, who can hand it over to the relatives of the deceased, otherwise he is to hand it over to the overseers of the parish.

Much doubt and discussion have arisen as to the power of the coroner to exclude individuals from the inquest. It may now, however, be fairly inferred from the late case of *Garnet v. Ferrand*, 6 B. & Cress. 611; 9 D. & R. 657, that the coroner has the power of excluding not only particular individuals, attorneys, counsel, &c., but the public generally. It was held in that case that no action would lie against a coroner for excluding a party from an inquest. The coroner should however exercise his own discretion fairly, and not arbitrarily (*l*). The Prisoner's Counsel Act does not apply to coroner's inquests.

Inquests on bodies found in the sea, or any creek, river, or navigable canal within the flow of the sea, are, where there is a deputy-coroner for the jurisdiction of the Admiralty, to be held as at common law (*m*).

When an inquisition *super visum corporis* has properly commenced before a deputy-coroner, lawfully appointed under the 6 & 7 Vict. c. 83, s. 1, it will be properly continued by him, although the coroner

(*l*) 4 Arch. J. P. 90.

(*m*) *R. v. Hinde*, 12 J. P. 788.



himself should enter the inquest room, and remain till the close of the proceedings.

An inquisition purported to be taken before R. D. coroner, and was signed "R. D. by E. M., his deputy lawfully appointed;" *Held*, that as all inquests taken and other acts performed by the deputy-coroner, are, by the 6 & 7 Vict. c. 83, s. 1, to be deemed and taken to all intents and purposes whatsoever, to be the acts and deeds of the coroner, this form was correct, substantially or because the words "by E. M., &c.," might be rejected as surplusage.

*Quære*, whether this court will inquire into the lawfulness or reasonableness of the absence of the coroner for whom a deputy lawfully appointed has acted (*n*).

A coroner ought to tender the inquisition to the jury for signature immediately after the verdict is delivered, and if he take time to prepare his inquisition the jurors do not thereby lose their right to refuse signing.

If a coroner compel the jury to sign an inquisition by threats of committing them for contempt in the event of their refusing, the court will quash the inquisition.

A coroner's inquisition charging two persons with having caused the death, may, for misconduct in the coroner in reference to one only, be quashed as to that one only,

A rule for quashing a coroner's inquisition, which charges two persons with having caused the death, on the ground of misconduct in the coroner with reference to one of them only, need not be served on the other (*o*).

If the court of Queen's Bench has the power to grant a writ of *habeas corpus* for the bringing before a coroner's jury in order that he may be identified, a person who has been committed for trial upon a charge of murder, it will not exercise that power unless a case of urgent necessity, for instance, the impossibility of otherwise proceeding with the investigation, be made out.

*Per Coleridge, J.*—The court has the power to grant the writ in a case of urgent necessity (*p*).

No person ought to be allowed to make a statement before a coroner not on oath. Whenever a person comes forward and offers to make a statement he ought first to be sworn, no matter whether other evidence may point suspicion to him or not. It is the duty of the coroner to receive evidence on oath alone, and he cannot refuse to examine on oath, allowing the party to make a simple statement not on oath, on the ground that his evidence may possibly criminate him hereafter. All that the coroner can do is to caution a party who is giving evidence on oath, if he should think his evidence tends to criminate him, and to leave it to his discretion to go on or not as he pleases (*q*).

(*n*) *R. v. Perkins*, 9 J. P. 279.

(*o*) *R. v. Chilcote*, 10 J. P. 91.

(*p*) *In re Daniel Cocke*, 9 J. P. 730.

(*q*) *Wakley v. Healey*, 13 J. P. 121.



13. *Cruelty to Animals.*

*By stat. 12 & 13 Vict. c. 92,—An Act for the more effectual Prevention of Cruelty to Animals.*

Sect. 1. *Recited Acts repealed, save as to offences committed before passing of this Act.*] Recites 5 & 6 Will. 4, c. 59, "An Act to consolidate and amend the several Laws relating to the cruel and improper Treatment of Animals, and the Mischiefs arising from the driving of Cattle, and to make other Provisions in regard thereto:" and 7 Will. 4 & 1 Vict. c. 66, "An Act to extend to Ireland the Act of the fifth and sixth Years of His late Majesty's Reign, consolidating and amending the Laws relating to the cruel and improper Treatment of Animals:" and that it is expedient to repeal the provisions of the said recited Acts, and to make other and more effectual provisions for promoting the objects and purposes of the said Acts: and "therefore" enacts, "That from and after the passing of this Act the said recited Acts (excepting so far as they, or either of them, repeal any other Act or part of any other Act) be and the same are hereby repealed, save as to any offences committed against the provisions of the said recited Acts, or either of them, before the passing of this Act, which offences shall and may be dealt with, and the offenders proceeded against and punished, as if this Act had not passed."

2. *Penalty for cruelty to animals.*] That if any person shall from and after the passing of this Act cruelly beat, ill-treat, over-drive, abuse, or torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused, or tortured, any animal, every such offender shall for every such offence forfeit and pay a penalty not exceeding five pounds.

3. *As to places kept for bull-baiting, dog-fighting, &c.*] That every person who shall keep or use or act in the management of any place for the purpose of fighting or baiting any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature, or shall permit or suffer any place to be so used, shall be liable to a penalty not exceeding five pounds for every day he shall so keep or use or act in the management of any such place, or permit or suffer any place to be used as aforesaid; provided always, that every person who shall receive money for the admission of any other person to any place kept or used for any of the purposes aforesaid shall be deemed to be the keeper thereof; and every person who shall in any manner encourage, aid, or assist at the fighting or baiting of any bull, bear, badger, dog, cock, or other animal as aforesaid, shall forfeit and pay a penalty not exceeding five pounds for every such offence.

4. *As to damage done by persons guilty of cruelty to animals.*] That if any person shall, by cruelly beating, ill-treating, over-driving, abusing, or torturing any animal, do any damage or injury to such animal, or shall thereby cause any damage or injury to be done to any person or to any property, every such offender shall on conviction of such offence pay to the owner of such animal (if the offender shall not be the owner thereof), or to the person who shall sustain damage or injury as aforesaid, such sum of money by way of compensation, not exceeding the sum of ten pounds, as shall be ascertained and



determined by the justice of the peace by whom such person shall have been convicted: provided always, that the payment of such compensation, or any imprisonment for the non-payment thereof shall not prevent or in any manner affect the punishment to which such person or the owner of such animal may be liable for or in respect of the beating, ill-treating, or abusing of the said animal: provided also, that nothing herein contained shall prevent any proceeding by action against such offender, or the employer of such offender, where the amount of damage or injury is not sought to be recovered under this Act.

5. *Persons impounding animals to provide food and water.*] That every person who shall impound or confine, or cause to be impounded or confined, in any pound or receptacle of the like nature, any animal, shall provide and supply during such confinement a sufficient quantity of fit and wholesome food and water to such animal; and every such person who shall refuse or neglect to provide and supply such animal with such food and water as aforesaid, shall for every such offence forfeit and pay a penalty of twenty shillings.

6. *Power to supply food and water to animals impounded.*] That in case any animal shall at any time be impounded or confined as aforesaid, and shall continue confined without fit and sufficient food and water for more than twelve successive hours, it shall and may be lawful to and for any person whomsoever, from time to time, and as often as shall be necessary, to enter into and upon any pound or other receptacle of the like nature in which any such animal shall be so confined, and to supply such animal with fit and sufficient food and water during so long a time as such animal shall remain and continue confined as aforesaid, without being liable to any action of trespass or other proceeding by any person whomsoever for or by reason of such entry for the purposes aforesaid; and the reasonable cost of such food and water shall be paid by the owner of such animal, before such animal is removed, to the person who shall supply the same, and the said cost may be recovered in like manner as herein provided for the recovery of penalties under this Act.

7. *Persons keeping places for slaughtering cattle, &c. to affix names, &c.*] Recites that by 26 Geo. 3, c. 71, "An Act for regulating Houses and other Places kept for the Purpose of slaughtering Horses," it is enacted, that every person and persons licensed according to the provisions of that Act shall cause to be painted or affixed over the door or gate of the house or place where he, she, or they shall carry on the business of slaughtering horses or other cattle, in large legible characters, his, her, and their name and names, together with the words, "Licensed for slaughtering Horses, pursuant to an Act passed in the twenty-sixth year of His Majesty King George the Third:" and that no penalty is provided by the said recited Act for the refusal or neglect to comply with the said provision: For remedy whereof it enacts that any person licensed as aforesaid who shall refuse or neglect to comply with the said recited provisions of the said recited Act shall forfeit and pay for such offence a penalty not exceeding five pounds, and shall forfeit and pay a like penalty for every day during which such refusal or neglect shall con-



tinue, such penalties to be recovered as penalties under this Act are directed to be recovered.

8. *Regulations as to cattle sent to be slaughtered.*] That every person keeping or using or acting in the management of any place for the purpose of slaughtering horses or other cattle (not intended for butcher's meat) shall, immediately upon any horse or other cattle being brought to or delivered at such place for the purpose of being slaughtered, cut off or cause to be cut off the hair from the neck of such horse or other cattle and within three days from the time of such horse or other cattle, being brought or delivered as aforesaid, shall kill or cause to be killed the said horse or other cattle, and, until such horse or other cattle shall be killed, shall supply such horse or other cattle with a sufficient quantity of fit and wholesome food and water; and if any person keeping or using or acting in the management of any such place shall neglect or omit to cut or cause to be cut off the hair of the neck of such horse or other cattle, or to kill or cause to be killed any such horse or other cattle, within the time above limited, or shall neglect or omit to supply a sufficient quantity of fit and wholesome food and water to such horse or other cattle as aforesaid, every such person shall on conviction of any or either of the said offences be liable to a penalty not exceeding five pounds.

9. *Cattle intended for slaughter not to be employed.—Penalty.*] That if any person keeping or using or having the management of any place for the purpose of slaughtering horses or other cattle (not intended for butcher's meat) shall use or employ or cause or permit to be used or employed any horse or other cattle brought to or delivered at, or which shall be in or upon such place for the purpose of being slaughtered, or shall permit or suffer any such horse or other cattle to leave the said place, to be employed in any manner of work, every such person shall be liable to forfeit and pay a penalty not exceeding forty shillings for every day on which such horse or other cattle shall be so used or employed, or shall be absent from such place; and every person who shall be found using or employing any such horse or other cattle, or in the possession of any such horse or other cattle whilst so used or employed, shall be liable to forfeit and pay a penalty not exceeding forty shillings for every day he shall use or employ or be so possessed of any such horse or other cattle as aforesaid.

10. *Description of cattle to be entered in a book.—Penalty for neglect.*] That every person keeping or using or having the management of any place for slaughtering horses or other cattle (not intended for butcher's meat) shall, at the time of receiving any horse or other cattle in such place, enter in a book such a full and correct description of the colour, marks, and gender of such horse or other cattle as may clearly distinguish and identify the same; and if any such person shall refuse or neglect to make or cause to be made such entry in a clear and distinct manner, or shall refuse or neglect to produce such book before any justice of the peace whenever required by such justice so to do, or shall refuse to allow such book to be inspected, and extracts to be made therefrom, at all reasonable times, by any constable, or other person duly authorized by such



justice, every such person shall be liable to forfeit and pay a penalty for every such offence not exceeding forty shillings.

11. *Persons licensed to slaughter horses not to be licensed as horse dealers at the same time.*] That it shall not be lawful for any person who shall be licensed to slaughter horses, during the time while such license shall be in force, to be licensed as a horse dealer, or exercise or use the trade or business of a dealer in horses, and if any person licensed to slaughter horses shall, while such license shall be in force, obtain a license as a horse dealer, every such last-mentioned license shall be void.

12. *Penalty for improperly conveying animals.*] That if any person shall convey or carry or cause to be conveyed or carried in or upon any vehicle any animal in such a manner or position as to subject such animal to unnecessary pain or suffering, every such person shall forfeit and pay a penalty not exceeding three pounds for the first offence, and a penalty of five pounds for the second and every subsequent offence.

12. *Apprehension of offenders.*] That when and so often as any of the offences against the provisions of this Act shall happen, it shall and may be lawful for any constable, upon his own view thereof, or upon the complaint and information of any other person who shall declare his or her name and place of abode to the said constable, to seize and secure by the authority of this Act any such offender, and forthwith without any other authority or warrant to convey such offender before a justice of the peace, to be dealt with by such justice for such offence according to law.

14. *Justice may hear complaints made under this Act within one month after offence committed.*] That every complaint under the provisions of this Act shall be made within one calendar month after the cause of such complaint shall arise, and every offence committed against this Act may be heard and determined by any justice of the peace within whose jurisdiction such offence shall be committed in a summary way upon the complaint of any person and without any information in writing; and it shall be lawful for any such justice in all cases where any person complained of shall not be in custody, to summon such person to appear before such justice, or before any other justice of the peace at a time and place to be named in such summons; and on the appearance of the party accused, or in default of such appearance upon proof of the service of such summons, the said justice or any other justice who shall be present at the time and place appointed for such appearance shall proceed to examine into the matter; and if upon the confession of the party accused, or on the oath of one or more credible witness or witnesses, the party accused shall be convicted of having committed the offence charged or complained of, the party so convicted shall pay such penalty, damage, or compensation as the said justice shall according to the provisions of this Act adjudge, order, or award, together with the costs of conviction, to be settled by such justice, or be otherwise dealt with according to the provisions of this Act.

15. *As to service of summons.*] That any summons issued by any such justice, requiring the appearance of any party charged as an offender against any of the provisions of this Act, shall be deemed



and taken to be well and sufficiently served in case either the summons or a copy thereof shall be served personally on such person as aforesaid, or shall be left at his usual or last known place of abode, in whatever county or place such summons may be served or left.

16. *Warrant may be issued by justice without summons.*] That any justice of the peace may, without issuing any such summons as aforesaid, forthwith issue his warrant for the apprehension of any person charged with any offence against the provisions of this Act, whenever good grounds for so doing shall be stated on oath before such justice.

17. *Justices may summons witnesses to appear.*] That any justice of the peace may summon any witness to appear and give evidence before him upon the matter of any offence against the provisions of this Act; and if any such witness shall, after tender of his reasonable expenses in that behalf, neglect or refuse to attend at the time and place stated in such summons, then proof on oath being first given of the personal service of the summons upon such witness, such justice may issue his warrant for the apprehension of such witness, and such justice may commit any witness appearing or being brought before him who shall refuse to give evidence, to the house of correction or common gaol within the jurisdiction of such justice, there to remain without bail or mainprize for any time not exceeding twenty-one days, or until such witness shall sooner submit himself to be examined or to give evidence; and in case of such submission the order of such justice shall be a sufficient warrant for the immediate discharge of such witness from custody.

18. *Offenders not paying penalty may be committed.*] That in every case of a conviction under this Act where the sum imposed as a penalty, or the amount awarded for compensation or damage, together with costs (if any), by any justice of the peace, for or in respect of any offence against the provisions of this Act, shall not be paid immediately upon the conviction, or within such time as the convicting justice shall, in the exercise of his discretion, appoint and limit in that behalf, it shall be lawful for such justice, and he is hereby required to commit the offender to the house of correction, there to be imprisoned, with or without hard labour, for any time not exceeding two calendar months, unless payment be sooner made: provided always, that if such conviction shall take place before two justices or before one of the police magistrates sitting at any police court within the metropolitan police district, it shall be lawful for such justices, or such police magistrate, if they or he shall think fit, instead of imposing a pecuniary penalty, forthwith to commit any such offender to the house of correction, there to be imprisoned, with or without hard labour, for any time not exceeding three calendar months.

19. *Vehicles, &c., may be detained.*] That whenever any person having charge of any vehicle or any animal shall be taken into custody by any constable for any offence against the provisions of this Act, it shall be lawful for such constable to take charge of such vehicle or animal, and deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof, or the owner thereof, may become liable, and for



payment of any expenses which may have been or may be necessarily incurred for taking charge of and keeping the same ; and it shall be lawful for any justice of the peace before whom the case shall have been heard to order such vehicle or animal to be sold for the purpose of satisfying such penalty and reasonable expenses, in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and expenses.

20. *Penalty for obstructing constables.*] That in case any person at any time or in any manner unlawfully obstruct, hinder, molest, or assault any constable or keeper of a pound while in the exercise of any power or authority under or by virtue of this Act, every such person shall forfeit and pay a penalty not exceeding five pounds for every such offence.

21. *Distribution of penalties.*] That all pecuniary penalties which shall be recovered before any justice of the peace under the provisions of this Act shall be respectively divided, paid, and distributed in the following manner : (that is to say,) one moiety thereof to the overseers of the poor of the parish in which the offence shall have been committed, to be by such overseers applied in aid of the rates of their respective parishes, and the other moiety thereof to the person who shall complain and prosecute for the same, or to such other person as to such justice shall seem fit and proper ; and that every sum of money which shall or may be ascertained, determined, adjudged, and ordered by any justice of the peace under the authority of this Act to be paid as the amount of any damage or injury occasioned by the commission of any of the offences hereinbefore mentioned, shall be paid to the person who shall or may have sustained such damage or injury, according to the order or determination and discretion of such justice ; provided always, that the moiety of penalties hereby directed to be paid to the overseers of the poor shall, if recovered before any justice of the peace under the provisions of this Act upon convictions of offences committed in Ireland, be paid to such hospital, dispensary, or infirmary, as the justice before whom the conviction shall have taken place may direct, to be by the treasurer thereof applied in aid of the funds maintaining such institution.

22. *Proprietors of public vehicles may be summoned to produce their servants.*] That when any complaint shall be made before any justice of the peace against the driver or conductor of any hackney carriage, or the driver or conductor of any stage carriage, or the driver of any cart, waggon, van, or other vehicle, for any offence committed by him against the provisions of this Act, it shall be lawful for such justice, if he shall think proper, forthwith to summon the proprietor of such hackney or stage carriage, or the owner of such cart, waggon, van, or other vehicle, to produce before him the driver, conductor, or other servant by whom such offence was committed, to answer such complaint : and in case such proprietor or owner, after being duly summoned, shall fail to produce the driver, conductor, or servant, it shall be lawful for the justice of the peace before whom such driver, conductor, or servant shall be required to be produced, if he shall think fit, to proceed, in the



absence of such driver, conductor, or servant, to hear and determine the case, in the same manner as if he had been produced, and to adjudge payment by the proprietor or owner, of any penalty or sum of money and costs in which the driver, conductor, or servant shall be convicted, and any sum of money which shall be so paid by the proprietor or owner shall and may be recovered in a summary way from the driver, conductor, or servant through whose default such sum shall have been paid, upon proof of payment thereof, and of such servant's refusing or neglecting to be produced pursuant to the order of the justice, in the same manner as penalties are to be recovered under the provisions of this Act: provided always, that if the said justice of the peace shall deem it proper, it shall be lawful for him, when such proprietor or owner shall fail to produce his driver, conductor, or servant, without any satisfactory excuse, to be allowed by such justice, to impose a fine of forty shillings upon such proprietor or owner, and so from time to time as often as he shall be summoned in respect of such complaint, until he shall produce the said driver, conductor, or servant.

23. *Form of conviction.*] That every conviction for any offence against this Act may be drawn and made according to the following form or to the effect thereof, or as near thereto as the case shall permit:—

——— } “Be it remembered, That on the —— day of ——,  
to wit, } in the year of our Lord ——, A. B. is brought before  
me [or us] C. D. *et cætera*, a justice [or justices] of the peace for  
the [here insert the county, borough, or other jurisdiction of the  
justice or justices], and is charged before me [or us] with having  
[here describe the offence], contrary to the provisions of a certain  
Act [here insert the title of this Act], and it appearing unto me  
[or us] upon the confession of the said A. B. [or upon the oath of a  
credible witness or witnesses, *as the case may be*], that the said  
A. B. is guilty of the said offence, I do therefore adjudge the said  
A. B. [here insert the adjudication, and, in the case of a second or  
subsequent offence, add these words] the same being the second [or  
any subsequent] offence against the provisions of the said Act.  
Given under my [or our] hand [or hands] at [here insert the place  
where the justice or justices may be], the day and year first above  
written.”

24. *Convictions to be transmitted to general or quarter sessions.*] That every justice of the peace before whom any person shall be convicted of any offence against this Act shall transmit the conviction to the next general or quarter sessions which shall be holden for the county, borough, or other jurisdiction wherein the offence shall have been committed, there to be kept by the proper officer among the records of the said court; and upon any complaint or proceeding against any person for a subsequent offence, a copy of such conviction certified by the proper officer of the said court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.



25. *Appeal.*] That in all cases where the sum adjudged to be paid on any conviction shall exceed two pounds, and in all cases where imprisonment shall be adjudged, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than fourteen days after the day of such conviction for the county, borough, or other jurisdiction wherein the cause of appeal shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody, and the court at such session shall hear and determine the matter of the appeal, and shall make such order therein as to the court shall seem meet, and in case of the dismissal or non-prosecution of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be thereby awarded, and also the costs of such appeal, or incident thereto, or occasioned thereby, and shall, if necessary, issue process for enforcing such judgment: provided always, that it shall be lawful for the said court to adjourn the hearing of any such appeal to any succeeding sessions, if such court shall think fit; and such court, in the event of such postponement, may make any order for the payment of costs by either party to the other as to such court shall seem reasonable.

26. *Convictions not to be removed.*] That no conviction made under the authority of this Act, nor any order, judgment, or proceeding relative thereto, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of Her Majesty's superior courts of record; and no warrant of commitment under the provisions of this Act shall be held void by reason of any defect therein, provided it be therein alleged that the party committed has been convicted, and there be a good and valid conviction to sustain the same.

27. *As to actions.*] That no action shall be brought against any justice of the peace or other person for anything done in pursuance or under the authority of this Act, unless such action shall be commenced within two calendar months next after the fact committed, and no such action shall be commenced until one calendar month at least after a notice in writing of such intended action shall have been delivered to the defendant, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action shall be clearly and explicitly stated, and upon the back thereof shall be indorsed the name and place of abode of the parties so intending to sue, and also the name and place of abode or of business of the said



attorney or agent, if such notice have been served by such attorney or agent: and in every such action the venue shall be laid in the county where the act complained of was committed, or, in actions in the county court, the action shall be brought in the court within the jurisdiction of which the act complained of was committed; and the defendant in any such action shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse or justification in evidence under such plea, at the trial of such action; and in every such case, after notice of action shall be given as aforesaid, and before such action shall be commenced, the defendant to whom such notice shall be given, may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit, as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, shall be at liberty to pay into court such sum of money as he may think fit; and which said tender and payment of money into court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if it shall be found at the trial that the plaintiff is not entitled to damages beyond the sum tendered or paid into court, or beyond the sums so tendered and paid into court, the defendant shall be entitled to a verdict, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff; or if, where money is so paid into court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the court in which such action shall be brought, an order that such money shall be paid out of court to him, and that the defendant shall pay him his costs, to be taxed: and thereupon the said Act shall be determined, and such order shall be a bar to any other action for the same cause.

28. *Venue in actions.—Costs.*] That if at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or when such plaintiff shall sue in the county court within the district for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the defendant shall be entitled to a verdict; and the defendant shall in all cases where he shall obtain judgment, upon verdict or otherwise, be entitled to his full costs in that behalf, to be taxed as between attorney and client.

29. *Meaning of certain words.*] That for the purposes of this Act the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings



are not excluded by the context or by the nature of the subject matter; (that is to say,)—

The word “justice” shall be taken to mean a justice of the peace or magistrate for the county, city, borough, liberty, cinque port, riding, or other jurisdiction in which any offence against this Act shall be committed, or in which the matter requiring the cognizance of any justice of the peace or magistrate shall arise:

The word “animal” shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal:

The word “constable” shall be taken to mean any headborough, parish beadle, peace officer, special constable, or any person belonging to the metropolitan or city of London police forces, or any constabulary force in any part of the United Kingdom:

The expression “house of correction” shall be taken to mean the house of correction or common gaol for the county, city, borough, liberty, cinque port, riding or other jurisdiction for which the justice of the peace by whom any person shall be committed under the provisions of this Act shall act:

And, subject to the context and to the nature of the subject matter, words denoting the singular number are to be understood to apply also to a plurality of persons, animals, or things; and words denoting the masculine gender are to be understood to apply also to persons and animals of the feminine gender; and the word “over-drive” shall also signify over-ride.

In the case of *Hopkins v. Crowe*, 7 Car. & P. 373, it was held, that if under the 9th section of the statute 5 & 6 W. 4, c. 59, a peace officer be required by another person to take a third person into custody for cruelty to a horse, not committed in the officer's own view, the officer before taking the party into custody, should either inquire into all the particulars, or should see the animal, so as to form a judgment as to what has occurred. And Lord Denman, C. J., in summing up, said:—“If the defendant directed the police officer to take the plaintiff into custody, he is liable in the present action for false imprisonment; but if he merely made his statement to the constable, leaving it with the constable to act or not as he thought proper; that is, if the defendant in effect said, you may take him, if you think proper; then the defendant will not be liable, at least not in this form of action.

“Police officers are quite wrong to take a person into custody merely because another says, ‘he has cruelly used my horse.’ They should either inquire into all the particulars, or else they should see the animal, so as to form a judgment as to what has occurred. If the defendant gave the plaintiff in charge to the police officer, your verdict ought to be for the plaintiff; and as the defendant was not the owner of the horse, I am of opinion that he was not entitled to notice of action, as not being the owner, he could have no right to apprehend an offender.”

And by stat. 17 & 18 Vict. c. 60,—An Act to amend the above Act of the 12 & 13 Vict. c. 92, it is enacted by sect. 1, that every person who, since the passing of the 12 & 13 Vict. c. 92, has im-



pounded or confined, or hereafter shall impound or confine as in the said Act mentioned, any animal, and has provided and supplied or shall hereafter provide and supply such animal with food and water as therein mentioned, shall and may and he is hereby authorized to recover of and from the owner or owners of such animal not exceeding double the value of the food and water so already or hereafter to be supplied to such animal, in like manner as is by the said last-mentioned Act provided for the recovery of penalties under the same Act; and every person who has supplied or shall hereafter supply such food and water shall be at liberty, if he shall so think fit, instead of proceeding for the recovery of the value thereof as last aforesaid, after the expiration of seven clear days from the time of impounding the same to sell any such animal openly at any public market (after having given three days public printed notice thereof) for the most money that can be got for the same, and to apply the produce in discharge of the value of such food and water so supplied as aforesaid and the expenses of and attending such sale, rendering the overplus (if any) to the owners of such animal.

2. After reciting that, by the 2 & 3 Vict. c. 47, it was enacted, under a penalty, that dogs should not be used for the purposes of draught within the metropolitan police district, and it is desirable that such enactment should be extended to all parts of the United Kingdom: be it enacted, that any person who shall, from and after the first day of January one thousand eight hundred and fifty-five, on any public highway in any part of the United Kingdom, use any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow, shall forfeit and pay a penalty not exceeding forty shillings for the first offence, and not exceeding five pounds for the second and every subsequent offence, such penalties to be recovered in like manner as is provided for the recovery of penalties under the 12 & 13 Vict. c. 92.

#### 14. *Cutlers.*

By stat. 59 G. 3, c. 7, ss. 1, 3, Persons who make, forge, or manufacture by means of the "hammer," knives, forks, razors, shears, scissors, and other cutlery wares, edge tools and hardware, requiring a cutting edge of wrought steel or of iron and steel, may stamp on any part of such cutlery the figure of a hammer at any time after the forging, and previous to the grinding or polishing, so as to mark that such articles have been formed by the hammer, and not in a mould or otherwise. Stamping cutlery with the mark of a hammer, or any device resembling it, which has been formed in a mould or otherwise than by the hammer, or having in possession, selling, or exposing to sale such cutlery, *subjects the same to forfeiture*, together with the sum of 5*l.* for any quantity not exceeding one dozen, and for any quantity exceeding one dozen, 5*l.* for every dozen.

And by section 4, no person shall stamp such cutlery as aforesaid, forged and formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, either at the time of forging or



casting, or subsequently thereto and previously to the sale, any word which may denote the quality to be otherwise than the real quality, or shall expose to sale or have in possession such falsely-marked cutlery, on pain of forfeiture, together with 5*l.* for any quantity not exceeding one dozen articles, and for any quantity exceeding a dozen 5*l.* for every dozen.

By section 5, No person shall stamp on cutlery the word *London* or *London-made*, or words of similar import, unless the articles have been made within London or twenty miles thereof; nor shall have such falsely-stamped articles in possession or expose them to sale, on pain of forfeiture of the same, together with 10*l.* for every dozen articles, or for any quantity exceeding a dozen, 10*l.* for every dozen.

By sections 6 & 7, exemption from penalties, if the offender prove the articles came into his possession before the 25th of March, 1819; or if he prove he bought them not knowing they were marked contrary to the statute, and discover the person of whom he bought them.

By section 8, two justices may hear and determine, and the penalty to be enforced by sale and distress; in default of distress to be imprisoned for not more than three months. By section 15, one-third of penalty to the poor, the remainder to the informer. By section 13, witness not attending after summons, penalty 10*l.* Information to be exhibited within six calendar months.

### 15. *Damage-feasant.*

The earliest form of the law of distress, and the most important branch at the present day, after that of a distress for rent, is a distress of things, *damage-feasant*.

It is a remedy by which, if cattle or other things be on a man's land, incumbering it, or otherwise doing damage there, he may summarily seize them, without legal process, and retain them, impounded, as a pledge for the redress or injury done. As to the instances in which this distress may be made, it may be said generally, to be a remedy applicable wherever anything animate or inanimate is upon land doing damage thereto, or to its produce; and it is available for any person who is aggrieved by such damage (a).

### 16. *Disorderly Houses.*

*Disorderly houses*, 281.

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*Bawdy-houses*, 283.

*Disorderly houses.*] By stat. 25 Geo. 2, c. 36, s. 5, in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is enacted, that if any two inhabitants of any parish or place paying scot and bearing lot therein, do give notice in writing to any constable (or other peace officer of the like nature, where there is no constable,) of such parish

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(a) See Bullen's Law of Distress, 227.



or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house therein, the constable or officer receiving such notice shall forthwith go with such inhabitants to one of His Majesty's justices of the peace of the county, city, riding, division, or liberty, in which such parish or place does lie, and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence; enter into a recognizance in the penal sum of 30*l.* to prosecute with effect the offender at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet, and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, city, &c., where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants, and in case such overseers shall neglect or refuse to pay such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of 10*l.* and 10*l.*, such overseers, and each of them, shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid.

Sect. 6. Provided always, that upon such constable or other officer entering into such recognizance to prosecute as aforesaid, the said justice shall forthwith make out his warrant to bring the person accused before him, and shall bind him over to appear at such general or quarter sessions or assizes, there to answer to such indictment as shall be found against him for such offence, and such justice may, if he think fit, likewise demand, and take security for such person's good behaviour in the mean time, and until such indictment shall be found, heard, and determined to be returned by the grand jury not to be a true bill.

The 58 Geo. 3, c. 70, s. 7, (after reciting the above provision of 25 Geo. 2, c. 36, s. 6, and that it is expedient that when any two inhabitants of any parish or place, paying scot and bearing lot therein, shall give notice in writing to any constable of such parish or place of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or place, that the overseers of the poor of such parish or place shall have notice thereof), enacts, that a copy of the notice which shall be given to such constables, shall also be served on or left at the places of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned, or have reasonable notice to attend before such justice of the peace, before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall then and there enter into such recognizance to prosecute such offender as the constable is in and by the said Act required to enter into, then it shall not be necessary



for, nor shall such constable be required to enter into such recognizance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend, and shall decline or refuse to enter into such recognizances to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expenses, to be allowed as in and by the said Act is directed.

By the 25 Geo. 3, c. 36, s. 7, it is provided also, that if any such constable shall neglect or refuse, upon such notice, to go before any justice of the peace, or to enter into such recognizance, or shall be wilfully negligent in carrying on the said prosecution, he shall for every such offence forfeit the sum of 20*l.* to each of such inhabitants so giving notice as aforesaid.

*Bawdy-houses.*] A constable, upon information that a man and woman are gone to a lewd house, or about to commit fornication or adultery therein, may if he find them together, carry them before a justice of the peace without any warrant, and the justice may bind them over to the sessions. Constables in these cases may call others to their assistance, enter bawdy-houses, and arrest the offenders for a breach of the peace; in London they may carry them to prison; and by the custom of the city, whores and bawds therein may be carted.

### 17. Dog-stealing.

*By stat. 8 & 9 Vict. c. 47,—An Act for the further Prevention of the Offence of Dog-stealing.—it is enacted:—*

Sect. 1. 7 & 8 G. 4, c. 29—*Certain provisions of recited Act repealed.*] Whereas by an Act passed in the seventh and eighth years of His Majesty King George the Fourth, intituled, “An Act for consolidating and amending the laws in England relating to larceny, and other offences connected therewith, certain provisions were made for the prevention of dog-stealing; and whereas it is expedient for the further prevention of the said offence, that the provisions of the said recited Act, so far as relates to dog-stealing, and to dealing with the offenders in respect to the said offence shall be repealed; be it therefore enacted, That from and after the passing of this Act the said provisions, so far as aforesaid, shall be repealed.”

2. *Punishment for stealing dogs,—first offence; second offence.*] If any person shall steal any dog, every such offender shall be deemed guilty of a misdemeanor, and being convicted thereof before any two or more justices of the peace, shall, for the first offence, at the discretion of the said justices, either be committed to the common gaol or house of correction, there to be imprisoned only, or be imprisoned and kept to hard labour, for any term not exceeding six calendar months, or shall forfeit and pay over and above the value of the said dog such sum of money, not exceeding twenty pounds, as to the said justices shall seem meet; and if any person so convicted shall afterwards be guilty of the said offence, every such offender shall be guilty of an indictable misdemeanor, and being convicted thereof shall be liable to suffer such punishment, by fine or imprisonment, with or without



hard labour, or by both, as the court in its discretion shall award, provided such imprisonment do not exceed eighteen months.

3. *Penalty for having possession of stolen dogs, or of their skins,—first offence; second offence.*] If any dog, or the skin thereof shall be found in the possession, or on the premises of any person by virtue of any search warrant, to be granted, as is hereafter in that behalf provided, the justice by whom such search warrant was granted may restore the same to the owner thereof, and the person in whose possession or on whose premises the same shall be so found, such person (knowing that the dog has been stolen, or that the skin is the skin of a stolen dog), shall, on conviction before any two or more justices of the peace, be liable, for the first offence, to pay such sum of money, not exceeding twenty pounds, as to the justices shall seem meet; and if any person so convicted shall be afterwards guilty of the said offence, every such offender shall be deemed guilty of a misdemeanor, and punishable accordingly.

4. *Penalty for compounding for offences against this Act.*] If any person shall publicly advertise or offer a reward for the return or recovery of any dog which shall have been stolen or lost, and shall, in such advertisement, use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement, purporting that a reward will be given or paid for any dog which shall have been stolen or lost, without seizing or making any inquiry after the person producing such dog, every such person shall forfeit the sum of twenty-five pounds for every such offence, to any person who will sue for the same, by action of debt, to be recovered with full costs of suit.

5. *Apprehension of offenders.*] Any person found committing any offence punishable either upon summary conviction or upon indictment by virtue of this Act, may be immediately apprehended, without a warrant, or by any police officer, or by the owner of the dog, with respect to which the offence shall be committed, or by his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove, upon oath, before a justice of the peace, a reasonable cause to suspect that any person has in his possession or on his premises any stolen dog, such justice may grant a warrant to search for such dog; and any person to whom any dog shall be offered to be sold or delivered, if he shall have reasonable cause to suspect that such dog has been stolen, is hereby authorized, and, if in his power, is required to apprehend and forthwith to convey before a justice of the peace the party offering the same, together with such dog, to be dealt with according to law.

6. *Penalty for receiving money to restore stolen dogs.*] Any person who shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanor, and punishable accordingly.

7. *Offenders may be remanded or admitted to bail.*] Any justice may, if he shall think fit, remand for further examination, or may suffer to go at large, with or without sureties, upon his personal



recognizance, any person who shall be charged before him with any offence or misdemeanor, punishable by this Act, whether the same be punishable by summary conviction, or as an indictable misdemeanor.

8. *If penalties not paid justices to commit offenders.*] In every case of summary conviction under this Act, where the sum which shall be forfeited for the value of any dog as is hereinbefore provided, or which shall be imposed as a penalty by the justices, shall not be paid either immediately after the conviction or within such period as the justices shall, at the time of the conviction appoint, it shall be lawful for the convicting justices to commit the offender to the common gaol or house of correction, there to be imprisoned only or imprisoned and kept to hard labour for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or both (as the case may be), together with the costs, shall not exceed five pounds; and for any term not exceeding four calendar months where the amount with costs shall not exceed ten pounds, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

It must be remarked here, no power is given by any part of the Act to the magistrates to grant a warrant to apprehend, and therefore the safest mode of proceeding would be, to issue a summons and duplicate thereof, and should the accused not appear, prove on oath the service of the summons and produce the duplicate thereof; the accused may then be convicted in his absence, should the evidence be sufficient to support the charge.

No mention is made of costs in summary proceedings for the first offence, and therefore the 11 & 12 Vict. c. 43, must be resorted to. No mention is made as to whom the value of the dog is to be paid, nor as to the penalty being disposed of.

By section 3 of the same Act, If any dog, or the skin thereof, shall be found in the possession or on the premises of any person, by virtue of any search warrant to be granted as is hereafter in that behalf provided, &c.

By sect. 5, If any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises, any *stolen* dog, such justice may grant a warrant to search for such dog. The skin of a dog is not here named.

### 18. *Dogs, vicious, unmuzzled.*

To justify shooting another's dog, it is not sufficient to show that the dog was of a ferocious disposition, and was at large; but he must be actually attacking the party at the time; and therefore, where the defendant had shot a dog after it had attacked him and was running away: held that he was not justified in so doing (a).

B., a hawker, went to the house of C. to sell goods, and a dog of

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(a) *Morris v. Nugent*, 7 C. & P. 572.



C.'s coming out of the house, B. knocked out one of his eyes, for which C.'s wife caused B. to be apprehended: held, that it was for the jury to say whether B. had struck the dog for his own preservation, and fairly to protect himself; or whether it was a wilful and malicious trespass on his part. To justify the apprehension of an offender under the Malicious Trespass Act, 7 & 8 G. 4, c. 30, the offender must be taken in the fact, or on a quick pursuit (*a*).

In an action for not sufficiently securing a fierce dog, kept by the defendant, and by which the plaintiff was bitten, the plaintiff may recover, notwithstanding he had on a previous day been warned against going near the dog, if the jury think the accident was not occasioned by the plaintiff's own carelessness and want of caution (*b*).

It is not sufficient to show that the dog was of a savage disposition, and usually tied up, and that defendant promised to make a pecuniary satisfaction to plaintiff after he had been bit by the dog (*c*).

In an action for negligently keeping a dog, proof that the defendant had warned a person to beware of the dog, lest he should be bitten, is evidence to go to a jury, of the allegation that the dog was accustomed to bite mankind (*d*).

In an action against a party for keeping a dog accustomed to bite mankind, it is not essential that the dog should be his; if he harbour the dog, or allows it to resort to his premises, that is sufficient (*e*).

An averment in a declaration that the defendant's dogs were accustomed to worry and bite sheep and lambs, is not supported by proof that the dogs were of a ferocious and mischievous disposition, and that they had frequently attacked men (*f*).

*Semble*, however, that an averment that the dogs were of a ferocious and mischievous disposition, would be sufficient in an action on the case brought for an injury to plaintiff's sheep, without alleging specifically that they were accustomed to bite and worry sheep.

The allegation in a plea to an action of trespass for shooting a dog, that he attacked the defendant, and was accustomed to attack and bite mankind, are both material and must be proved (*g*).

Where the defendants justified the shooting the plaintiff's dog, by pleading that he attacked them, and that "he was accustomed to attack and bite mankind," the plaintiff may call witnesses to prove the general quietness of the dog (*h*).

If defendant justify shooting a dog because the dog was worrying his fowl, and could not otherwise be prevented, he must prove that

(*a*) *Hanway v. Boulton*, 4 C. & P. 350; 2 M. & M.; Harrison's Digest, vol. i. p. 831.

(*b*) *Curtis v. Mills*, 5 C. & P. 489.

(*c*) *Beck v. Dyson*, 4 Camp. 198.

(*d*) *Judge v. Cox*, 1 Stark, 285.

(*e*) *M'Kane v. Wood*, 5 C. & P. 1.

(*f*) *Hartley v. Harriman*, 1 B. & A. 620; *Hartley v. Halliwell*, 2 Stark. 212; Holt, 617.

(*g*) *Clarke v. Webster*, 1 C. & P. 104.

(*h*) Harr. Dig. vol. i. p. 573.



the dog was in the act of worrying the fowl at the very moment he shot him (*i*).

If a man place dangerous traps, baited with flesh in his own grounds, so near to a highway, or to the premises of another, that dogs passing along the highway, or kept in his neighbour's premises, must probably be attracted by their instinct into the trap, and in consequence of such act his neighbour's dogs be so attracted and thereby injured, an action on the case lies (*k*).

In an action for a vicious bull doing an injury, the plaintiff recovered, although it appeared that the bull was attracted by a cow in a particular state, which the plaintiff was driving past the field in which the bull was, and that the plaintiff first struck the bull on the head to drive him away from the cow (*l*).

The owner of a vicious animal, after notice of its having done an injury, is bound to secure it at all events, and is liable in damages to a party subsequently injured, if the mode he has adopted to secure it prove to be insufficient.

No action lies for an injury arising from the defendant letting loose a dog in his own premises, for their protection at night (*m*).

A party who is bitten by a dog, in consequence of being himself on the owner's land, on which he is not entitled to go, can maintain no action for the injury (*n*). Nor if the injury arises from his own carelessness, with knowledge of the danger.

But if he has no means of knowing the danger, and is not otherwise in fault, he may recover, although the owner has attempted to give notice; therefore it is no answer to such action that a printed notice was put up, if it appears that the plaintiff could not read (*o*).

In an action on the case for keeping a mischievous dog, by which plaintiff's child was bitten, a report that it had been before bitten by a mad dog was evidence that the defendant knew him to be mischievous (*p*).

It has been ruled that if any dog has once bit a man, and the owner having notice thereof, keeps the dog and lets him go about, or lie at his door, an action will lie against him, at the suit of the person bit, though it happened by his treading on the dog's toes; for it was occasioned by his not killing the dog on the first notice, and the safety of the king's subjects ought not afterwards to be endangered (*q*).

A mastiff going in the streets unmuzzled, from the ferocity of his nature, seemeth to be a common nuisance, and the owner may be indicted for suffering him to go at large (*r*).

In the case of *Sarch v. Blackburn*, 4 C. & P. 297, Tindal, C. J. said: "I think a man has no right to place a dog so near the door of

(*i*) *Janson v. Brown*, 1 Camp. 41.  
 (*k*) *Townsend v. Walthen*, 9 East, 277; Harrison's Digest, vol. i. p. 572.  
 (*l*) *Blackman v. Simmons*, 3 C. & P. 138.  
 (*m*) *Brock v. Copeland*, 1 Esp. 203.

(*n*) *Sarch v. Blackburn*, M. & M. 505; 4 C. & P. 297.  
 (*o*) Harr. Dig. vol. i. p. 573.  
 (*p*) *Jones v. Perry*, 2 Esp. 482.  
 (*q*) *Smith v. Pelah*, 2 Stra. 1264.  
 (*r*) 1 Russ. 303.



his house that any person coming to ask for money, or on other business might be bitten."

If a man has a dog that kills sheep, this is not a public nuisance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of such quality he shall not be punished for this killing (*s*).

If a man keeps a dog accustomed to bite sheep, and he knows it, and notwithstanding he keeps the dog still, and afterwards the dog bites a *horse*, this shall be actionable; because the owner, after notice of the first mischief, ought to have destroyed or hindered him from doing any more hurt (*t*).

It may be as well to remark here, that where the offence is committed either wilfully or carelessly by the owner of the dog, he may be, "if preferable," convicted under statute 7 & 8 G. 4, c. 30, s. 24.

The owner of a sheep in a field which had been worried by a dog, shot the dog when in another field, at some distance off; held, in an action by the owner of the dog, that the defendant was not justified in the act of shooting, as it was not done in the protection of his property (*u*).

The servant of the owner of an *ancient* park may justify shooting a dog that is chasing the deer, although such shooting may not be absolutely necessary for the preservation of the deer, and the servant may justify the shooting, although the dog may not have been chasing the deer at the moment when it was shot, if the chasing of the deer and the shooting the dog were all one and the same transaction (*v*).

Dogs are personal property within the meaning of the statute 7 & 8 G. 4, c. 30, s. 24 (*w*).

### 19. *Drunkenness.*

A peace officer in cities, boroughs, &c., and if authorized by a local Act, may apprehend any person found in a state of drunkenness, and confine him in the watchhouse.

But a peace officer in a rural district has no right to interfere with a person who is drunk and going quietly home; but if he be disorderly or incapable of taking care of himself, he should be apprehended, and may be discharged when sober, and summoned at a future time when most convenient. Any person may be summoned for drunkenness. A publican cannot recover for beer furnished to third persons by the order of an individual who has previously become intoxicated by drinking in his house (*x*).

A person apprehended or summoned for drunkenness, on being

(*s*) 1 Arch. N. P. 560.

(*t*) *Jenkins v. Turner*, 1 Lord Raym. 110; Salk. 662.

(*u*) *Wells v. Head*, 4 C. & P. 568.

(*v*) *Protheroe v. Matthews*, 5 C. & P. 581.

(*w*) *Hanway v. Boulton*, 4 C. & P. 350.

(*x*) *Brandon v. Old*, C. & P. 440.



convicted thereof before one justice on view, confession, or the oath of one witness, he shall forfeit for the first offence, five shillings, to be paid within one week after conviction, to the churchwardens for the use of the poor; (but by 3 & 4 Vict. c. 88, s. 10, this penalty is given to the superannuation fund for constables, if convicted in the county where the county police are established): if he refuse or neglect to pay the same, it may be levied by distress; or if the offender be not able to pay, he shall be committed to the stocks, there to remain after the space of six hours.

If he be convicted a second time, he shall be bound by recognizance with two sureties, conditioned to be thenceforth of good behaviour (*y*).

It may be well to remark here, that costs cannot be charged in this case, but merely the penalty of five shillings. And if he be convicted a second time, he shall be bound in a recognizance with two sureties, in the sum of 10*l.*, conditioned to be thenceforth of good behaviour (*z*).

Voluntary drunkenness is no excuse whatever for crime, but the party shall be punished in precisely the same manner as if he were sober at the time he committed the act (*a*).

## 20. *Eaves-droppers, Night-walkers, &c.*

Eaves-droppers, or such as listen under walls and windows or the eaves of houses, to hearken after discourse, and therefore to form slanderous and mischievous tales, are a common nuisance, and presentable at court leet, or are indictable at the sessions, and are punishable by fine, and are to find sureties to keep the peace and be of good behaviour (*b*).

And Mr. Dalton says that, night-walkers that eaves drop men's houses, or cast men's gates, carts, or the like into ponds, or commit other outrages or misdemeanors in the night, or shall be suspected to be pilferers, or otherwise likely to disturb the peace, or that be persons of ill behaviour or of evil fame or report generally, or that shall keep company with any such, or with any other suspicious person in the night, are liable to find sureties for their good behaviour before a justice of the peace (*c*).

(*y*) 21 J. 1, c. 7, ss. 1, 3. 1 Arch. J. P. 407.

(*z*) 21 Jac. 1, c. 7, ss. 1, 3.

(*a*) Co. Lit. 247; 1 Hawk. c. 1, s. 6.

Also see *R. v. Carrol*, 7 Car. & P.

145. *R. v. Meakin*, Id. 297, 1 Arch. J. P. 408.

(*b*) 4 Bla. Com. 163.

(*c*) 1 Hawk. c. 61, s. 4.



*21. False Pretences and Cheats.*

By stat. 7 & 8 G. 4, c. 29, s. 53, reciting that a failure of justice frequently arises from the subtle distinction between larceny and fraud, for remedy thereof it is enacted, "That if any person shall, by any false pretences, obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be kept in penal servitude for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or by both, as the court shall award. Provided always, that if, upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor, and no such indictment shall be removable by certiorari; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts."

And by stat. 21 & 22 Vict. c. 47, an Act to amend the law of false pretences, it is enacted, that if any person shall by any false pretence obtain the signature of any other person to any bill of exchange, promissory note, or any valuable security, with intent to cheat or defraud, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be sentenced to penal servitude for the term of four years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award.

The ingredients of the offence are the obtaining money, &c., by false pretences, and with an intent to defraud. "The term, 'false pretence,'" says Mr. East, "is of great latitude, and was used, as Ashurst, J. remarked, in Young's case, to protect the weaker part of mankind, because all were not equally prudent; it seems difficult therefore to restrain the interpretation of it to such false pretence only, against which common prudence cannot be sufficient to guard. But still, it may be a question, whether the statute extends to every false pretence, either absurd or irrational on the face of it, or such as the party has, at the very time, the means of detecting it at hand; or whether the words, which are general, shall be considered co-extensively with the cheat actually effected by the false pretences used. These may, perhaps, be matters proper for the consideration of a jury, with the advice of the court.

In the following case, however, the judges appear to have been of opinion, that the want of common prudence and caution on the part of the prosecutor was an answer to the indictment. The prisoner was indicted for obtaining meat from the prosecutor, who was a butcher, under false pretences that he would pay for the same on delivery, and would send the money back by the servant of the prosecutor. The jury found a verdict of guilty, and that at the time the prisoner applied for the meat, and promised to send back the money, he did not intend to return the money, but by that means to



obtain the meat and cheat the prosecutor. On a case reserved for the opinion of the judges, they held the conviction wrong, and that it was not a pretence within the meaning of the statute. It was merely a promise for future conduct, and common prudence and caution would have prevented any injury arising from the breach of it (c).

So, falsely warranting an unsound horse to be sound, well knowing it to be otherwise, is no offence, unless there be a conspiracy to defraud, and then an indictment might be supported for a conspiracy (d). So where one pretended to be a merchant, and the other a broker, and, as such, bartered bad wine for hats, it was considered that they were guilty of the offence of conspiracy to cheat, but not of an offence of cheating (e).

If a man be authorized to inspect and pay a number of journeymen, and to draw on the clerk of the masters for the amount of the sums earned, and he delivers in a false account, he will be guilty within the Act 7 & 8 G. 4, c. 29, s. 53, as he would never have obtained the credit unless he had delivered his fictitious estimate (f).

So obtaining money from a post-office master, by assuming to be the person mentioned in a money order, which the party presented for payment (g).

And there may be a sufficient false pretence within the Act, by the acts and conduct of the party, without any verbal representation of a false and fraudulent nature. As where a person at Oxford, who was not a member of the university, went for the purpose of fraud, in a commoner's dress, and obtained goods: this was held a sufficient false pretence, though no words passed (h).

So if A. come to B., and pretend that he has been sent by C. to receive a debt due from B. to C., and receive it, however secure A. may be from an indictment for a fraud at common law, he must be considered as guilty of a false pretence under the statute (i). So where the prisoner went to a tradesman's house, and said she came from Mrs. Cook, a neighbour, who would be much obliged if she would let her have half-a-guinea's worth of silver, and that she would send the half-guinea presently, which was granted, the prisoner never returned, the court held that this was not a felonious taking, but a false pretence (k). So if a tradesman be imposed upon by a defendant under a pretence that the defendant was sent by a customer to order goods, it is a false pretence if the goods be obtained (l).

Mr. Woolrych says, it may be a question how far the tender of notes, illegal, useless, or absurd on the face of them, can be called an offence within this Act. The defendant was apprehended for offer-

(c) *Goodhall's case*, Russ. & Ry. 461; Roscoe's Digest, 419.

(d) *R. v. Pymell*, 1 Stark. 402.

(e) *R. v. Macarty*, 2 Lord Raym. 1179, 1184; 2 East, P. C., c. 18, s. 1, 824.

(f) *R. v. Witchell*, 2 East, P. C., 830.

(g) *R. v. Storey*, R. & R. 81.

(h) *R. v. Bernard*, 7 C. & P. 784.

(i) Woolrych on Misdemeanors, 38.

(k) East, P. C. 672, *Coleman's case*.

(l) Leach, 498, *Cockwaine's case*; Russ. & Ry. 225, *Adams's case*; Wool. on Misd. 38.



ing notes of the Oundle bank in exchange for a horse, that bank having failed some years since. The prosecutor parted with his horse upon the faith of the prisoner's assurance that the notes were good; but he did not present them at Oundle, nor in London, where they were made payable. It was sworn that the bank in question had stopped payment about seven years before, and that the notes had been exhibited under a commission of bankruptcy against that firm; that the words importing the memorandum of exhibit had been attempted to be obliterated, but that the names of the commissioners remained on each of the notes. The jury found the notes to be of no value, and that the prisoner meant to cheat the prosecutor of his horse. But the judges held that sufficient evidence had not been given of the badness of the notes, and the conviction was set aside. Upon the point whether the offence would have been indictable, had the evidence been sufficient, they gave no opinion (*m*). Mr. Woolrych says, in his valuable edition on Misdemeanors, "It is not improbable but that the learned judges might have considered the stamped marks on the note as sufficient to have required a certain degree of caution on the part of the prosecutor, which he had not used, and that the note not being sound in all its parts, as in *Freeth's case*, ought to have raised a suspicion which further inquiry would have satisfied, and that the bank might have resumed payment, and its notes, if presented, might have been paid."

The writer at this moment holds a note which was paid by a party of low horse dealers; it is of the Carlisle old bank, which, the writer believes, paid a dividend of sixteen shillings to the pound. This note bears the bankrupt's commissioners' signature, but the memorandum of exhibit is obliterated, and by such a degree of care, that it must be a keen eye indeed to detect the erasure. A great many of these notes are in the hands of several low horse-dealers, called "sharp swappers."

The evidence to support an indictment for false pretences is,—proof that the prisoner made a pretence [of the existence of a fact]; that in consequence of such pretence he obtained the property mentioned in the indictment; and that such pretence was false. The Act makes the receiving, by virtue of the false pretence, the substantive crime: and therefore where the pretence was set on foot in Herefordshire, but the cheat took effect in Monmouthshire, it was held that the trial ought not to have been in Herefordshire (*n*).

A plaintiff in error had been convicted and sentenced to seven years' transportation on the second count of an indictment which charged him in the words of the 7 & 8 G. 4, c. 29, s. 53, with having, by the false pretence that he was a captain in Her Majesty's 5th regiment of dragoon guards, obtained from one J. W. a valuable security for 500*l.*, a cheque for that amount. He subsequently brought error, and assigned for error:—First, it does not appear that the false pretence set forth in the second count was made with the intention of obtaining the valuable security alleged in the said second count to have been obtained. Secondly, the means by which

(*m*) *Flint's case*, Russ. & Ry. 460.

(*n*) *R. v. Buttery*, 4 B. & A. 179; Wool. on Misd. 48.



the said false pretence so operated on the mind of the prosecutor as to induce him to part with the valuable security, are not sufficiently set out. Thirdly, the false pretence in the count was not sufficient in law to support an indictment. Fourthly, the pretence set forth is not shown to be false by legal and sufficient allegations, because it is not negatived that the plaintiff in error was not a captain in the 5th dragoon guards when he received the proceeds of the cheque. Fifthly, that it was not shown that there was any money remaining due and unsatisfied on the security obtained. But *per curiam*:—There is nothing in any of these objections. It is quite unnecessary that a person indicted for obtaining goods by false pretences should have obtained the precise chattel which it was his object to obtain. It must be taken that the pretence laid was that which operated on the mind of the prosecutor, because the jury has so found it, and it certainly is a sufficient pretence in law. The negative averments are sufficient, it being only necessary to negative the false pretence at the time when the security was parted with. It is sufficient that the security was a valuable one; and the last as well as the first objection would, if defective, be cured by the 7 G. 4, c. 64, s. 21 (o).

A. the servant of B. rendered an account to B. of 14*l.* 1*s.* 2*d.* as due from A. to his workmen, and B. gave A. a cheque for the amount: all that sum was so due except 7*s.* which A. kept when he got the cheque cashed, and paid the workmen the residue. In one count of an indictment for false pretences, it was charged that, by this false pretence, A. obtained the cheque from B. with intent to defraud him of the same. It was objected, that the intent was only to defraud B. of a part of the proceeds of the cheque. A was convicted, and the fifteen judges held the conviction right, and that the evidence supported the count (p). *False receipt*.—A. bought cheese of B. at a fair, and paid for it. Before he bought it, B. who was offering cheeses for sale there, bored two of the cheeses with an iron scoop, and produced a piece of cheese called a taster at the end of the scoop for A. to taste; he did so, believing it to have been taken from the cheese, but it had not, and was of a superior kind of cheese, and fraudulently put by B. into the scoop, the cheese bought by A. being very inferior to it: *Held*, that B. was indictable for obtaining the price of the cheese from A. by false pretences (q).

An indictment on the stat. 6 & 7 Will. 4, c. 86, s. 41, for making false statements for the purpose of their being inserted in a marriage register, alleged that a clergyman had solemnized a marriage and was about to register in duplicate the particulars relating to this marriage, and that the defendant did wilfully make to the clergyman who solemnized the office of marriage, “for the purpose of being inserted in the register of marriage, certain false statements:—*Held*, that this was supported by proof that the entry was made by the church clerk before the marriage, and that, after the marriage, the clergyman read over the statements to the defendant, and asked him if they were correct, and that he answered

(o) *Hamilton v. The Queen*, 10 J. P. 371.

(p) *Reg. v. Leonard*, 2 C. & K. 514.

(q) *Reg. v. Abbott*, 2 C. & K. 630.



in the affirmative. *Held*, also, that on such an indictment it was not necessary to prove that the register books were furnished to the clergyman by the registrar-general (*r*). *Registration of Births, Deaths, and Marriages, — Felony.* — The stat. 6 & 7 Will. 4, c. 86, s. 41, makes it a misdemeanor to make a false statement of one or more of the particulars required to be registered for the purpose of being inserted in any register of birth, death, or marriage; and to constitute this offence the purpose need not be effected. But it is a felony under the 43rd section of that statute to cause the registrar to make an entire false entry of a birth, marriage, or death (*s*).

A railway ticket entitling a passenger to travel upon a railway to a certain place, without any further charge, is a chattel of value, within the meaning of 7 & 8 G. 4, c. 29, s. 53, and a person obtaining such a ticket by false pretences from a servant of the railway company is guilty of a misdemeanor (*t*).

Any false statement of an existing fact fraudulently made for the purpose of obtaining money, and by which money is obtained, is a false pretence within the statute 7 & 8 G. 4, c. 29, although the prosecutor might, by the exercise of reasonable caution, have detected the imposition. The question is for the jury whether, in truth, the false statement did impose upon the prosecutor and induce him to part with his money. Therefore the secretary of a society of Odd Fellows, who had falsely pretended to one of the members that he owed to the society more than in truth he did owe, and obtained money thereby, was held to be properly convicted, under the statute (*u*). *Larceny.—Servant.*—It was the duty of the prisoner, who was a servant of the prosecutor's, in the absence of their chief clerk, to purchase and pay for on behalf of his masters any kitchen stuff brought to their premises for sale. On one occasion he falsely stated to the chief clerk that he had paid 2s. 3d. for kitchen stuff which he had bought for his masters, and demanded to be paid for it. The clerk on this paid him 2s. 3d. out of money which his master had furnished him with to pay for the kitchen stuff. The prisoner applied the money to his own use.—*Held*, that as the clerk had delivered the money to the prisoner with the intention of parting with it altogether, the prisoner was not liable to an indictment for stealing the money. But that he might have been indicted for obtaining it by false pretences (*v*).

A false appeal to excite compassion whereby money or goods are obtained, is a false pretence within the statute 7 & 8 G. 4, c. 29, s. 33. The defendant by false pretences induced the prosecutor to send him a post-office order through the post.—*Held*, that he was triable in the county in which the letter was posted, though it was received in another county (*w*). *Necessity of setting out instrument.*—When a written instrument is employed as a part of the false pretence, whereby money or goods are fraudulently obtained, it is not necessary to set out the instrument in the indictment, unless

(*r*) *R. v. Brown*, 1 Den. C. C. 291.

(*s*) *R. v. Mason*, 2 C. & R. 622.

(*t*) *R. v. Bolton*, 13 J. P. 747.

(*u*) *R. v. Woolley*, 14 J. P. 302.

(*v*) *R. v. Barnes*, 15 J. P. 21.

(*w*) *R. v. Jones*, 14 J. P. 322.



some legal description is given to it, the accuracy of which it may be material for the court to decide. *Held*, therefore, that an indictment which simply alleged that the defendant falsely pretended that a certain printed paper, which he then produced, was a good and valid promissory note, was sufficient without setting out the printed paper (*x*).

A notorious cheat *ex. gr.* one having false dice and actually caught playing with them, may be apprehended by either constable or private person, in order to take him before a magistrate (*y*).

## 22. Fish and Fisheries.

By stat. 7 & 8 G. 4, c. 29, s. 34, if any person unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, every such offender shall be guilty of a misdemeanor; and if any person shall unlawfully and wilfully take or destroy, or attempt to take or destroy any fish in any water not being such as aforesaid, but which shall be private property, or in which there shall be any private right of fishery, every such offender shall forfeit, over and above the value of the fish, such sum of money not exceeding 5*l.*, as to the convicting justices shall seem meet. Nothing in this clause extends to angling in the day-time; but persons angling in the day-time in water of the first description are liable to a penalty of 5*l.*, and in water of the second description to a penalty of 2*l.* By sect. 35, persons found angling in the day-time against the provisions of this Act, the owner of the ground, water, or fishery, or his servants, or any person authorized by him may demand the rods, hooks, lines, or other fishing implements of the offender, and if he refuse to deliver them, they may be seized for the use of the owner; but persons whose implements are so seized are excused from the payment of any penalty or damage.

The word "adjoining" any dwelling-house must be taken to mean actual contact (*z*).

The means used to take the fish need not be set out in the conviction, that is, it is not absolutely necessary (*a*).

In the information it should set out a certain number of fish were taken; as stating "divers fish," without specifying the number, would be bad (*b*).

A conviction by two justices under the 7 & 8 G. 4, c. 34, for fishing in private water, need only negative that which, if it existed, would make the offence a misdemeanor, namely, that the water ran through land adjoining or belonging to the complainant; for that enactment deals only with the individual right of the party complaining: *Semble*, a second good conviction may, after a first has been returned to the sessions and filed, be given in evidence, although

(*x*) *R. v. Coulson*, 14 J. P. 354.

(*y*) *Jones*, 249; *Cro. Car.* 274.

(*z*) *R. v. Hodges*, *Moody & M.* 341.

(*a*) *R. v. Carradice*, *R. & R.*, C. C. 206.

(*b*) *Paley's C.* 82. *Rex v. Marshall*, 2 *Keb.* 594.



it has not been returned to the sessions, in support of a commitment under the 7 & 8 G. 4, c. 29, s. 34.—The complainant claimed a right of fishery in certain water under a demise from the mayor, aldermen, and burgesses of the borough of Cambridge under a deed, the counterpart of which was not executed by the lessee, by which the right of fishery in the same water was reserved to “the mayor, aldermen, and councillors of the borough of Cambridge;” *Held*, that the mayor and one of the aldermen of Cambridge, being a justice, were not by reason of the interest created by such reservation disqualified from hearing and deciding the complaint (*d*)

Though several parties be guilty of one joint offence, such as using one net, it should seem that each would be subject to the penalty of 5*l.* above the value of the fish taken, and the penalties should be imposed separately and not jointly, or the conviction would be bad (*e*). And one conviction with an award of several penalties against each should be made, and not several convictions.

By the 6 & 7 Vict. c. 33, justices are to make provision for more effectual fixing the days for being restrained from taking salmon, commonly called “fence days,” in the rivers Severn, Dee, Wye, Teame, Wear, Tees, Ribble, Mersey, Dun, Aire, Ouse, Swaile, Calder, Wharfe, Eure, Derwent, and Trent; and by the 7th section of the above statute, no person shall upon any pretence whatsoever, at any time after the days fixed by the justices to be fence days, take, kill, or destroy, or have in his or her possession, or cry, or carry about, sell, offer, or expose to or for sale, or shall exchange for any goods, matter or thing, any spawn, fry, or brood of fish, or any unsizeable fish, or any keeper, or shedder of salmon, or any salmon caught in any river during the periods when fishing for salmon is prohibited under the provisions of any law now in force, or when the same shall be prohibited by any order to be made by the justices at their sessions, as provided by the statute 58 G. 3, c. 43.

Penalty not more than 10*l.*, nor less than 5*l.* Also nets, engines, and devices, together with the fish so taken, to be forfeited.

*And by stat. 11 & 12 Vict. c. 52,—An Act to explain the Acts for preventing the Destruction of the Breed of Salmon and Fish of the Salmon kind, it is enacted:—*

Sect. 1. *The word “river,” in recited Acts to apply to tributary streams thereof.*] That an Act was passed in the fifty-eighth year of King George the Third, intituled “An Act for preventing the Destruction of the Breed of Salmon and Fish of the Salmon kind, in the rivers of England:” and that an Act was passed in the session of parliament held in the sixth and seventh years of the reign of her present Majesty, to amend and extend the provisions of the said first recited Act; and that it is expedient to remove doubts which

(*d*) *Fuller v. Brown*, 13 J. P. 445.

(*e*) *Morgan v. Brown*, 4 Adol. & Ell. 515.



have arisen whether the said Acts extend to the tributary streams of rivers, and whether certain of the provisions of the said secondly-mentioned Act extend to salmon trout and fish of the salmon kind; and enacts that in the construction of the said Acts respectively the words "river" and "rivers" respectively shall extend to and include all the tributary streams of such river and rivers respectively

2. *The last-recited Act to apply to salmon trout and fish of the salmon kind as well as to salmon.*] Enacts and declares, that all the provisions, penalties, and powers in the said Act of the sixth and seventh years of the reign of her present Majesty contained for the protection of and in relation to salmon shall extend and be applicable to salmon trout and fish of the salmon kind, as if in every case where salmon is in such Act mentioned salmon trout and fish of the salmon kind had been also expressly mentioned therewith.

3. *Not to extend to offences committed before passing of this Act.*] Provided that with respect to any offence committed or charged to have been committed before the passing of this Act, the said Acts shall be construed as if this Act had not been passed.

The word unsizeable fish is explained by the statute 1 Eliz. c. 17, ss. 1, 2, 3, 4, 5, which recites, no person shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon, or trouts, not being in season, being kepper or shedder; nor any pike, or pickerel not being in length ten inches fish or more, nor any salmon not being in length sixteen inches fish; nor any trout not being in length eight inches fish: nor any barbel not being in length twelve inches; and no person shall fish, or take fish by any device, but only with net or trammel, whereof the mesh shall be two inches and a half broad (angling excepted, and except smelts, loches, minnies, bullheads, gudgeons, and eels), on pain of forfeiting twenty shillings for every offence, and also the fish, nets, and engines.

The fish should be measured from the eye to the extent of the middle of the tail.

As has been noticed before, the 3 G. 4, c. 22, s. 2, if where two justices were required to convict, the commitment must have been by the two, but by that statute a commitment by one of the justices will be sufficient.

But where a commitment is directed to be by two or more justices, they should both be present in determining upon the commitment; but the mere act of placing their names and seals to the warrant may be done separately.

The commitment should contain the name and surname of the party committed, if known. If not known, then it may be sufficient to describe the person by his age, stature, complexion, and any other peculiarity, and to add that he refuses to tell his name (*f*).

The commitment must be under seal: without this the gaoler is liable to an action for false imprisonment, and the wilful permission of escape by the gaoler, or breach of prison by the felon, makes no felony (*g*).

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(*f*) 1 Hale, 577.

(*g*) 1 Hale, 583.



*Frauds by Trustees, Bankers and Bailees.*

*By stat. 20 & 21 Vict. c. 54.—An Act to make better Provision for the Punishment of Frauds committed by Trustess, Bankers, and other Persons intrusted with Property.*

Whereas it is expedient to make better provision for the punishment of frauds committed by trustees, bankers, and other persons intrusted with property: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

1. *Frauds by Trustees.*] If any person being a trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or purposes, or shall, with intent aforesaid, otherwise dispose of or destroy such property or any part thereof, he shall be guilty of a misdemeanor.

2. *Frauds by Bankers, Brokers, Agents. &c.*] If any person being a banker, merchant, broker, attorney, or agent, and being intrusted for safe custody with the property of any other person, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to or for his own use such property, or any part thereof, he shall be guilty of a misdemeanor.

3. *Frauds under powers of Attorney.*] If any person intrusted with any power of attorney for the sale or transfer of any property shall fraudulently sell or transfer or otherwise convert such property or any part thereof to his own use or benefit, he shall be guilty of a misdemeanor.

4. *Frauds by Bailees.*] If any person, being a bailee of any property, shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, he shall be guilty of larceny.

5. *Frauds by directors, &c., of any body corporate or public company.*] If any person, being a director, member, or public officer of any body corporate or public company, shall fraudulently take or apply, for his own use, and of the money or other property of such body corporate or public company, he shall be guilty of a misdemeanor.

6. *Or keeping fraudulent accounts.*] If any person, being a director, public officer, or manager, of any body corporate or public company, shall as such receive or possess himself of any of the money or other property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or cause or direct to be made a full and true entry thereof in the books and accounts of such



body corporate or public company, he shall be guilty of a misdemeanor.

7. *Or wilfully destroying books, &c.*] If any director, manager, public officer, or member of any body corporate or public company shall, with intent to defraud, destroy, alter, mutilate, or falsify any of the books, papers, writings, or securities belonging to the body corporate or public company of which he is a director or manager, public officer or member, or make or concur in the making of any false entry, or any material omission in any book of account or other document, he shall be guilty of a misdemeanor.

8. *Or publishing fraudulent statements.*] If any director, manager, or public officer of any body corporate or public company shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to such body corporate or public company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanor.

9. *Receivers of property fraudulently disposed of, misdemeanor.*] If any person shall receive any chattel, money, or valuable security which shall have been so fraudulently disposed of as to render the party disposing thereof guilty of a misdemeanor under any of the provisions of this Act, knowing the same to have been so fraudulently disposed of, he shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the party guilty of the principal misdemeanor shall or shall not have been previously convicted, or shall or shall not be amenable to justice.

10. *Punishment of misdemeanor under this Act.*] Every person found guilty of a misdemeanor under this Act shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to suffer such other punishment, by imprisonment for not more than two years with or without hard labour, or by fine, as the court shall award.

11. *Persons may be examined, but answers not to be given in evidence against them.*] Nothing in this Act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court of law or equity, or in the courts of bankruptcy or insolvency; but no answer to any such bill, question, or interrogatory shall be admissible in evidence against such person in any proceeding under this Act.

12. *Civil remedy reserved.—Convictions not evidence in civil suits.*] Nothing in this Act contained, nor any proceeding, conviction, or judgment to be had or taken thereon against any person under this Act, shall prevent, lessen, or impeach any remedy at law or in equity which any party aggrieved by any offence against this Act might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any



action at law or suit at equity against him ; and nothing in this Act contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

13. *Prosecution to be sanctioned by some judge or the attorney General.*] No proceeding or prosecution for any offence included in the first section, but not included in any other section of this Act, shall be commenced without the sanction of Her Majesty's attorney general, or in case that office be vacant, of Her Majesty's solicitor general : provided that where any civil proceeding shall have been taken against any person to whom the provisions of the said first section, but not of any other section of this Act, may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this Act without the sanction of the court or judge before whom such civil proceeding shall have been had or shall be pending.

14. *Person not to be acquitted if the offence proved be larceny.*] If upon the trial of any person under this Act it shall appear that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanor under this Act.

15. *Costs of prosecutions.*] In every prosecution for any misdemeanor against this Act the court before which any such offence shall be prosecuted or tried may allow the expenses of the prosecution in all respects as in cases of felony.

16. *Misdemeanors not triable at sessions.*] No misdemeanor against this Act shall be prosecuted or tried at any court of general or quarter sessions of the peace.

17. *Interpretation clause.*] The word "trustee" shall in this Act mean a trustee on some express trust created by some deed, will or instrument in writing, and shall also include the heir and personal representative of any such trustee, and also all executors and administrators, liquidators under the Joint Stock Companies Act, 1856, and all assignees in bankruptcy and insolvency :

The word "property" shall include every description of real and personal property, goods, raw or other materials, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods ; and such word property shall also denote and include not only such real and personal property as may have been the original subject of a trust, but also any real or personal property into which the same may have been converted or exchanged, and the proceeds thereof respectively, and anything acquired by such proceeds.



## Game.

*Penalties under the Game Acts,*  
301.  
*Game, what, within the Game*  
*Acts, 306.*  
*Partridges are not to be killed,*  
307.

*Hares, 308.*  
*Gamekeeper, 311.*  
*Certificate, 313.*  
*Trespass in pursuit of Game, 315.*  
*Night Poaching, 317.*

*Penalties under the Game Acts.]* By 1 & 2 W. 4, c. 32.—1st. By sect. 3, to a penalty of 20s. per head for killing out of season, before two justices.

2nd. By sect. 3, penalty of 5*l.* for killing game on a Sunday, &c., before two justices.

3rd. By sect. 4, to a penalty of 20s. per head for having possession of game after the expiration of the season, before two justices.

4th. By sect. 12, the occupier of land “where the landlord has the right to the game,” to a penalty of 2*l.*, and 1*l.* per head for all game killed, for either killing the game himself or by authorizing another to do so, before two justices.

5th. By sect. 19, to a penalty of 20*l.* for dealing in game without a certificate.

6th. By sect. 23, to a penalty of 5*l.* for taking or killing, or for attempting so to do, not being authorized for want of a game certificate, before two justices.

7th. By sect. 24, to a penalty of 5*s.* for each egg taken or destroyed from the nest of any bird of game, &c., or any swan, wild duck, teal, or widgeon, before two justices.

8th. By sect. 25, to a penalty of 2*l.* for each head of game sold by a person, or offered for sale by such person to any other person (not a licensed dealer), before two justices.

9th. By sect. 27, to a penalty of 5*l.* for each head of game bought, except from licensed dealers, before two justices.

10th. By sect. 28, to a penalty of not more than 10*l.* against a licensed person, who shall buy of an unlicensed or uncertificated person, before two justices.

11th. By sect. 28, to a penalty of 10*l.* against a licensed person who shall sell at a shop, not having a board affixed to it, before two justices.

12th. By sect. 28, to a penalty of 10*l.* against a licensed person affixing such board to more than one shop, before two justices.

13th. By sect. 28, to a penalty of 10*l.* against a licensed person, who having a board affixed to his shop, shall sell at any other place than such shop, before two justices.

14th. By sect. 28, to a penalty of 10*l.* against an unlicensed person, who shall pretend to be licensed, before two justices.

15th. By sect. 30, to a penalty of 2*l.* for trespassing on the lands of others, in pursuit of game, before one justice.

16th. By sect. 30, to a penalty of 5*l.* for trespassing to the number of five together, before one justice.



17th. By sect. 34, to a penalty of 5*l.* for refusing to quit the land, and to tell their names, &c., before one justice.

18th. By sect. 32, to a penalty of 5*l.* being found to the number of five, and using violence, &c., before two justices.

19th. By sect. 33, in a penalty of 2*l.* for being in his Majesty's parks in search of game, before one justice.

20th. By sch. L. rule 12, 52 G. 3, c. 93, to a penalty of 20*l.* for being uncertificated, before one justice, being a commissioner.

By 5 & 6 W. 4, c. 20, all penalties under the 1 & 2 W. 4, c. 32, are to be divided betwixt the person who shall inform and prosecute for the same, and the county, for the use of the general rate.

I would also observe here, under 5 & 6 W. 4, c. 20, s. 20, cases coming under the 25th and 27th sections of 1 & 2 W. 4, c. 32, the person informing or giving evidence shall be indemnified from any penalty incurred in the transaction, provided proceedings have not been commenced against him, before giving such information.

It must be observed, that the imprisonment is no part of the penalty, but only the means of enforcing it; and this seems limited by the Act to two months, where it is under 5*l.*, and to three months where it is above that sum; so that if the defendant were convicted in several penalties, the extreme term of imprisonment in default of payment would be but three months, if he were convicted in the several penalties in the same convictions, as he clearly might be; (a) and it would seem that in no case, if the convictions for the penalty took place at the same time, could the justice order the second term of imprisonment to commence at the termination of the first. There is an inaccuracy in the 38th section of the Game Act, the word "month" being printed for "months." This, however, it should seem, could not be considered such an ambiguity in the wording of the section, as to leave it doubtful what portion of imprisonment the magistrate may award (b). It also must be observed that no distress can be issued under the 1 & 2 W. 4, c. 32, but by 52 G. 3, c. 93, penalties are recoverable by distress and sale of the offender's goods. By the 8th section, 1 & 2 W. 4, c. 32, nothing in the said Act shall authorize the tenant to sport, or to authorize others to sport, where the right of sporting is in the landlord, by virtue of any lease or contract. By the 30th section, the leave and licence of the tenant shall be no defence for a trespasser, where the landlord has the right to kill the game.

It may be observed, that section 7 refers only to game; the landlord's and tenant's rights, in respect of woodcocks, snipes, quails, landrails and conies, are therefore unaltered by this section; but it is provided, as already stated by the 30th section, that where the landlord has the right of killing the game, the leave and licence of the occupier shall be no defence to a person prosecuted under that section by the landlord for a trespass in pursuit of game, or woodcocks, snipes, quails, landrails, or conies; so that, although the tenant may kill these animals, and without danger to himself give leave to a stranger to do so, the stranger acting on such leave will be liable to a

(a) *R. v. Swallow*, 8 T. R. 284.

(b) *R. v. Longmead*, 2 Leach, 698; Locke's G. L. 43.



penalty, and in default of payment, to imprisonment. It must also be observed, that by the 11th section, where the landlord has the right of killing the game, he shall have the right of authorizing others to do so (*d*).

Any person may lay an information under section 30, that power not being confined to the owner or occupier of the land (*e*). Lord Denman, C. J., in delivering the judgment of the court, said, "The question was whether it was necessary that the information under the 1 & 2 W. 4, c. 32, s. 30, should be laid by the owner or occupier of the land. We do not find that there is any decision upon the point, as we had thought there had been. We have therefore considered the subject, and are of opinion, that any person may make the complaint." I would also remark here, that by section 23, 1 & 2 W. 4, c. 32, the penalty of 5*l.* is confined to persons in search of game, and "game" is defined by this statute to consist of hares, pheasants, partridges, grouse, heath or moor game, and bustards: and therefore an uncertificated person killing woodcocks, snipes, quails, landrails, or conies, is not liable under this section; but under the Certificate Act, 52 G. 3, c. 93, such person is liable to a penalty of 20*l.*

A carrier is liable to a penalty of 5*l.* for each head of game bought from a person not licensed to deal in game.

The following case may be interesting:

*John Sutton*, Appellant, v. *A Conviction under the Game Act*.—The Hon Jas. S. Wortley appeared for the appellant and Mr. Baines for the respondent.

Before the merits of the appeal were gone into, Mr. Baines objected that the appeal could not be entertained by the court. He stated that this was an appeal under the 1 & 2 W. 4, c. 32, commonly known as the Game Act, and by the 44th section, it was enacted, that any person who should appeal against any conviction thereunder should enter into a recognizance, conditioned personally to appear at the sessions, and to pay such costs as should be awarded; but it appeared by the file of the court that the appellant had only entered into a recognizance, "to enter and prosecute an appeal, and to obey the order of the court." He contended, therefore, that the appellant was not in a condition to proceed with his appeal. Mr. Wortley was heard in reply, and after Mr. Baines had rejoined: the court held that the recognizance was defective, and that it had no power to try the appeal.

*Jones v. Gurdon*.—This was an action of trespass. The defendant was a justice of the peace and a commissioner of taxes for the county of Suffolk, and in October, 1839, he convicted the plaintiff upon an information laid against the plaintiff under the game laws, for having unlawfully had a hare in his possession, not being licensed for that purpose. The information on which the defendant adjudicated had been originally laid before another justice. The plaintiff brought this action for false imprisonment, alleging that, under the circumstances, the conviction was illegal. At the trial of the cause, several objections of a technical nature were taken against the plaintiff's right

(*d*) Locke's G. L. 14.

(*e*) *Middleton v. Gale and others*,  
7 Law Journal, M. C. 103.



to recover, but the learned judge refused to stop the cause, but left the case to the jury to assess the damages, and said he should then nonsuit the plaintiff, but give him leave to move the court to enter the verdict in his favour for the amount of the damages assessed. The jury assessed the damages at 10*l*. A rule was afterwards obtained according to the leave reserved, and the case was argued, when the court took time to consider the decision.

Lord Denman delivered the judgment of the court, and having stated the action, and the nature of the various objections taken on the part of the defendant, said that the court was clearly of opinion, that under the Game Act it was not competent for one justice to hear and determine a complaint of information, which had previously been exhibited before another justice. As the defendant here had adjudicated on an information exhibited before another justice, he had consequently acted without a good legal jurisdiction, and the rule for entering the verdict for the plaintiff for the damages found at the trial must be absolute (*f*).

Mr. Christian, in his *Game Laws*, page 161, says: "It may be considered that though several persons may join in using a dog or killing a hare, &c., this is but one offence, for there is in reality but one act done by all. But if they were each using a gun or dog, or each setting a snare, they would each be subject to a penalty, because each is guilty of a distinct, separate, and substantive act." But since the passing of the Act 54 G. 3, c. 141, which renders persons competent to assist in the taking of game, woodcocks, snipes, quails, landrails, or conies, provided that the act of aiding and assisting be done in the company, or presence, and for the use of another person, who shall duly have obtained a certificate in his own right, according to the statutes 52 G. 3, c. 93, and who therein shall then and there use his own dog, gun, net, or other engine, &c.; the aiding and assisting does not, it is presumed, extend to the using of a gun, because he who used it would render himself liable for killing game, but the assistant might, it is presumed, beat the bushes, &c., for such certificated person; as also he may aid and assist such person as aforesaid in coursing, hunting, &c., who uses only his own dogs. And therefore it may, the writer respectfully and confidently submits, be fairly admitted, that where several parties join in the using of a gun, one person having the gun, and others beating for game, &c., or where a party of several persons join in the using of a greyhound for the purpose of taking game, &c., without a certificate, as is directed by the statute 52 G. 3, c. 93, a separate penalty would attach to each person. And also see the 1 & 2 W. 4, cap. 32, s. 30, which imposes a penalty of 5*l*. upon each person trespassing in pursuit of game. Also see *R. v. Hube and others*, 5 T. R. 542, where the statute of 1 W. & M. c. 18, s. 11, inflicted a penalty of 20*l*. on any person or persons wilfully disquieting or disturbing any congregation permitted by that Act; it was held that if several persons be convicted under that Act, each of them would be liable to the separate penalty, though the offence were committed at the

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(*f*) But now see 11 & 12 Vict. c. 43, s. 29.



same time; that otherwise the construction of the Act would be absurd, for if the penalty were single, then if there was but one offender, he would pay 20*l.*, and if there were twenty offenders, each would pay only an aliquot proportion of the penalty, though the offence would be much increased in magnitude by their being twenty offenders: and that the more reasonable construction was, that each of the defendants should pay the whole penalty. (*g*) By the 12th rule of 52 G. 3, c. 93, the matter must be entirely set at rest; no doubts on the case can remain.

I would also observe here that the 54 G. 3, c. 141, only exempts persons from penalties who accompany certificated persons, and therefore strong doubts would exist as to such protection being afforded by gamekeepers acting by virtue of any deputation or appointment. As has already been noticed, it is but one offence in the same person, on the same day, under the Certificate Act, 52 G. 3, c. 93, for killing several head of game in the same day, this being an offence against the revenue laws; but yet he is liable to a dozen penalties under the 1 & 2 W. 4, c. 32, providing he enter and pursue game, &c., on as many different lands of different proprietors, the latter offence being against the owner of the soil.

A defendant may be convicted of several penalties in the same conviction. In a conviction in the sum of 15*l.* for three penalties under the game laws, the defendant being prosecuted, for that he on three several days, kept and used traps and engines to kill game; the objection was that he was charged with three offences, and the conviction was general, without saying of how many. The words were, "and thereupon he is convicted, and for his several offences aforesaid hath forfeited the sum of 5*l.* for each offence, making together the sum of 15*l.*," &c. &c. Lord Kenyon, C. J., said: "There is no objection to the conviction on the ground that the defendant has been convicted of several penalties. It is the constant practice in actions of the game laws, and not unfrequent in convictions, even in indictments for capital offences several offences are sometimes charged as burglary and stealing in the dwelling-house to the value of 40*s.* I by no means wish that magistrates in drawing up convictions should set all forms at nought; but they ought not to be entangled in greater forms and ceremonies than the superior courts. The word 'convicted' in this case applies to the several offences with which the defendant was charged, and to the evidence given in support of them; and the words following are, 'and for his several offences aforesaid,' &c.; taking the whole of the adjudication together, it is evident that the magistrate convicted the defendant in the three several offences charged." Conviction affirmed. (*h*)

A woman may be convicted under the Game Act, married or single; also a minor, when he is of sufficient age to distinguish right from wrong.

In *Calcraft v. Gibbs*, 5 T. R. 19, Lord Kenyon, C. J., said that the lord of a manor cannot convey to another the power of appointing a gamekeeper, without a conveyance also of the manor itself. Such

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(*g*) Locke's G. L. 9.

(*h*) *R. v. Swallow*, 8 T. R. 284.



a power is a mere emanation of the manor, and it is inseparable from it. It is a mere shadow accompanying the substance (*a*).

In case the appointment of gamekeeper be revoked by dismissal or otherwise during the current year, then, although the clerk to the commissioners may legally, and is required on application so to do, renew the certificate for the remainder of that year in behalf of the person so newly appointed, by indorsing the name and place of abode of the person to whom such new deputation or appointment has been granted, and declaring the same to be a renewed certificate free of duty or fee, yet by sect. 16 of the 1 & 2 W. 4, c. 32, such new appointment or deputation must be registered with the clerk of the peace.

*Game, what, within the Game Acts.*] By sect. 2 of the 1 & 2 W. 4, c. 32, "The word 'game' shall for all the purposes of this Act be deemed to include hares, pheasants, partridges, grouse, heath or moor-game, black game, and bustards."

It will be here observed, woodcocks, snipes, landrails, conies, or rabbits, are not game by this statute, and therefore a person could not be convicted under the 3rd section of this Act for killing game on a Sunday, unless they killed or were in pursuit of those named by section 2, certainly not for pursuing or taking any of the four latter description. Yet notwithstanding this, a person cannot take or kill, or attempt to take or kill, any woodcock, snipe, quail, landrail, or coney, without first taking out a certificate, as is directed by 52 G. 3, c. 93, schedule L. There are in this latter Act certain exceptions, viz., the taking of woodcocks and snipes with nets or springes; the taking or destroying conies by the proprietors of warrens, or on any inclosed ground whatever, or by the tenants of lands, either by himself, herself, or themselves, or by his, her, or their direction or command. These two words are of considerable import, as they alone can protect a second or third person from the subjecting himself to a penalty of 20*l.* for want of a certificate. Suppose my friend write me a note of invitation to shoot rabbits, and I accept his invitation, I am liable to the above penalty for want of a certificate; yet my friend can order, *direct*, and *command*, his servant to kill rabbits for his (my friend's) own use and benefit.

From the decisions given by Mr. Bell, Mr. Locke, and others, on the game laws, the following persons may take and kill rabbits without a certificate:—Proprietors of warrens and uninclosed lands,—proprietors of inclosed lands,—any person directed or commanded by such proprietor,—tenants of lands open or inclosed,—any person directed or commanded by such tenant.

Where a gentleman, a lieutenant of marines, had an order from the owner of the land to kill rabbits, he was held to be exempt within the proviso, of the statute 52 G. 3, c. 93. But, as has already been stated, the killing must be by express order or command, and the person commanded should stand in some fair and reasonable light of a servant for the time, and kill the rabbits for the use of

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(*a*) See 1 Arch. J. P. 435, 437.



and on behalf of the proprietor, as appears from the following case :—No. 641, county of Somerset, division of Wrington. At a meeting of commissioners of land and assessed taxes, Edward Prankard appealed against a charge made upon him of 3*l.* 13*s.* 6*d.*, for duty on a game certificate. It appeared on appeal, that the said Edward Prankard had been in the habit of using a gun for the purpose of killing rabbits, since the 5th of April last, upon inclosed lands of John Cox, gentleman, and other persons, who had all given full leave and permission so to do, whenever he liked. It also appeared, that the rabbits were a great nuisance to the persons so giving such leave and permission to kill them, in destroying crops growing on their lands, which lie near to a warren or inclosed ground, used for the purpose of keeping rabbits. The appellant was not paid for killing the said, rabbits, or employed so to do, any more than aforesaid, but went on the said lands with the leave and permission of the owners when he liked, and killed what rabbits he could, which he kept for his own use. The commissioners considering that the exemptions contained in the latter branch of the second exception to schedule L. in the 52 G. 3, c. 93, did not apply to the appellant's case, confirmed the charge ; but the appellant being dissatisfied therewith, and contending that the word "direction" ought to be held to imply "leave, permission, or consent," demanded a case for the opinion of the judges, which is here stated accordingly.

H. J. ADDINGTON,

B. SOMERS, M.D.

THOMAS P. COX.

5th December, 1831.—We are of opinion that the determination of the commissioners is right.

J. BAILEY,

J. PARKE,

J. A. PARKE,

W. BOLLAND.

S. GASELEE,

—*Locke's Game Laws*, p. 253, ed. 1856.

Partridges are not to be killed between the 1st day of February and the 1st day of September in any year. Nor pheasants between the 1st day of February, and the 1st day of October in any year. Nor black game between the 10th December and 20th day of August in the succeeding year (except in the county of Somerset or Devon, or in the New Forest in the county of Southampton, where it must not be killed between the 10th of December and the 1st day of September in any succeeding year). Nor any grouse or red game between the 10th day of December and the 12th day of August in the succeeding year, nor any bustard between the 1st day of March and the 1st day of September in any year. Penalty for so doing 1*l.* per head and costs, before two magistrates; any person poisoning or attempting to poison any game, penalty 10*l.*, before two magistrates.

By stat. 7 & 8 G. 4, c. 29, s. 33, if any person shall unlawfully and wilfully kill, wound, or take any house-dove or pigeon, such offender being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the bird, any sum not exceeding 2*l.*; and any person or persons stealing the same are guilty of larceny,



providing the pigeons, &c., under confinement, or young pigeons, which though not tame, being in the dove-house, are not able to fly out (*a*). And where pigeons were so far tamed, that they came home every night to roost in their boxes, after they had been out to feed, Taddy, S., held them to be the subjects of larceny (*b*); and also where the pigeons were shut up in their boxes every night (*c*).

An informer under the game Acts must prove every allegation in the information, except the negating by his evidence, certificates, licenses, consents, authorities, or other matters of excuse or defence; these are to be matter of defence.

Lord Kenyon, C. J., said, "It is sufficient in convictions if there were such evidence before the magistrates as in an action would be sufficient to be left to a jury."

Penalty for a witness not attending after having been duly summoned, 10*l.*, by the 52 G. 3, c. 93.

*Hares.*] *By stat. 11 & 12 Vict. c. 29,—An Act to enable Persons having a Right to kill Hares in England and Wales to do so by themselves or persons authorized by them, without being required to take out a Game Certificate, it is enacted:—*

Sect. 1. *Persons in the occupation of inclosed grounds, and in certain cases owners, may kill hares without a game certificate.*] That by an Act passed in the forty-eighth year of the reign of King George the Third, intituled "An Act for repealing the Duties of Assessed Taxes, and granting new Duties in lieu thereof, and certain additional Duties to be consolidated therewith, and also for repealing the Stamp Duties on Game Certificates, and granting new Duties in lieu thereof to be placed under the Management of the Commissioners for the Affairs of Taxes," and by an Act passed in the fifty-second year of the reign of the said King George the Third, intituled "An Act for granting to His Majesty certain new and additional Duties of Assessed Taxes, and for consolidating the same with the former Duties of Assessed Taxes," and by an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for granting to Her Majesty Duties of Customs, Excise, and Assessed Taxes," certain duties of assessed taxes were granted to Her Majesty the Queen upon, amongst other things, every person who shall use any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or shall assist in any manner in the taking or killing of any game: and that by divers laws now in force penalties are imposed on all persons taking or killing or assisting in the taking or killing of, amongst other things, any game whatever, who shall not have obtained a certificate of the due payment of such duties; and that it has been found that much damage has been and is continually done by hares to the produce of inclosed lands, and that great losses have thereby accrued and do accrue to the occupiers of such lands; and

(*a*) See 1 Hale, P. C. 511.

(*b*) *Brook's case*, 4 C. & P. 131; *R. v. Cheafor*, 21 L. J. 43, *m*.

(*c*) Parke, B., *Leeke's case*, M. S., Durham Spring Assizes, 1839.



that it is expedient that persons in the actual occupation of such inclosed lands, or the owners thereof, who have the right of killing game thereon, should be allowed to take, kill, and destroy hares thereon, without the payment of the said duties of assessed taxes, and without the incurring of any of the said penalties above mentioned; and enacts, that from and after the passing of this Act it shall be lawful for any person, being in the actual occupation of any inclosed land, or for any owner thereof who has the right of killing game thereon, by himself or by any person directed or authorized by him in writing, according to the form in the schedule to this Act annexed, or to the like effect, so to do, to take, kill, or destroy any hare then being in or upon any such inclosed lands, without the payment of any such duties of assessed taxes as aforesaid, and without the obtaining of an annual game certificate.

2. *Authority to kill hares to be limited to one person at the same time in any one parish;—which authority shall be sent to the clerk of the petty sessions, who shall register the same.—If authority revoked notice to be given of the same.*] Provided that no owner or occupier of land as aforesaid shall be authorized to grant or continue, under the provisions of this Act, authority to more than one person, at one and the same time, to kill hares upon his land within any one parish; and that he shall deliver the said authority, or a copy thereof, or cause the same to be delivered to the clerk of the magistrates acting for the petty sessions division within which the said lands are situate, who shall forthwith register the same, and the date of such registration, in a book to be kept by him for such purpose, which book shall be at all reasonable times open to the inspection of the clerk of the commissioners acting in the execution of the Acts for assessed taxes or of any of the collectors of assessed taxes within such district; and the said authority, so soon as it shall have been registered as aforesaid, shall be held good until after the first day of February in the year following that within which the same is granted, unless the same be previously revoked, and notice of such revocation be given to the clerk of the magistrates as aforesaid; and the said registered authority, or the unrevoked register thereof, shall be good and sufficient evidence of the right of the person to whom authority is given by the same to kill hares upon the lands mentioned within the same without having obtained an annual game certificate.

3. *Persons not to be liable to tax on gamekeepers.*] That no person so directed or authorized to kill any hare as aforesaid shall, unless otherwise chargeable, be liable to any duties of assessed taxes as gamekeepers.

4. *To extend to coursing or hunting.*] That from and after the passing of this Act it shall be lawful for any person to pursue and kill or to join in the pursuit and killing of any hare by coursing with greyhounds, or by hunting with beagles or other hounds, without having obtained an annual game certificate.

5. *Not to authorize the laying of poison.*] Provided that nothing herein contained shall extend or be taken or construed to extend to the making it lawful for any person, with intent to destroy or injure any hares or other game, to put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where



game usually resort, or in any highway, or for any person to use any fire-arms or guns of any description, by night for the purpose of killing any game or hares.

6. *Agreements reserving game to be still in force.*] Provided that where any tenant of any land for life or lives, years, or otherwise, now is or hereafter shall be bound by any agreement not to take, kill, or destroy any game upon any lands included in such agreement, then and in all such cases nothing herein contained shall extend or be taken or construed to extend to authorize or empower such tenant to take, kill, or destroy any hare upon any such lands so included in such agreement, or to authorize any other person to kill or destroy any hare upon any such lands.

7. *Interpretation of Act.*] That in the interpretation of this Act the singular number shall extend to several persons and things as well as to one person or thing; and any word importing the plural number shall apply to one person or thing as well as to several persons or things; and every word importing the masculine gender only shall extend to a female as well as a male; and that the word "agreement" shall include any covenant, proviso, promise, undertaking, condition, or reservation; and that the word "parish" shall include any hamlet, township, tithing, or extra-parochial place; and for the purposes of this Act the word "night" shall be considered and is hereby declared to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

8. *To extend to England and Wales only.*] That this Act shall extend to that part of the United Kingdom called England and Wales.

By stat. 7 & 8 G. 4, c. 29, s. 30, if any person shall unlawfully and wilfully in the night-time, take or kill any hare or coney in any warren or ground lawfully used for the breeding or keeping of hares or conies, whether the same be inclosed or not, every such offender shall be guilty of a misdemeanor, and punished accordingly. Thomas Glover set several snares in a warren at night, and in one of them a rabbit was caught. Just as he was about taking up the snare on the next morning where the rabbit was caught, the warrener surprised him. The rabbit was not dead. And the question was, whether this catching was a taking within the meaning of the Act. Le Blanc, J., thought it was not, and that taking meant, as in larceny, a taking away, but the rest of the judges (absent Dampier, J.) held that the word taking was satisfied by catching, and that the prisoner was rightly convicted. And under this section it is to be remarked, that the habitancy of the game, if such an expression can be admitted, must be exclusive. They must not be in a condition to run loose whither they will. So that, where a person was charged with destroying rabbits in the night-time, in a rick yard where they were kept, and ran about at liberty, it was held that he had not committed an offence within the meaning of the clause (a).

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(a) See Woolrych on Misdemeanors, p. 16.



*Gamekeeper.*] The appointment of a gamekeeper may be in this form:—Know all men by these presents, that I, W. J. S. M., of R., in the county of York, Esq., lord of the manor of R., in the said county, have “by virtue of the statute in such case made and provided,” nominated, authorized, and appointed, and by these presents do nominate, authorize, and appoint J. P., of R., in the county of —, yeoman, to be my lawful gamekeeper, to preserve and kill [if the appointment is only to preserve the game, the words “and kill” should be omitted] the game within the same manor for my sole use and immediate benefit, with full power and authority, according to the direction of the said statute, to seize and take for my use within the limits of the said manor, all such dogs, nets, and other engines and instruments for the killing or taking of game, as shall be used within the said limits, by any person not authorized to kill game, for want of a game certificate. And further, to do, execute, and perform, all and every act and acts, thing and things, within the limits of the said manor, which by virtue of the statute in such case made and provided, or of any laws of this realm belong and appertain to the office of a gamekeeper, during my will and pleasure, and for which this shall be his sufficient warrant. [If the appointment is only to preserve the game, then instead of the above, add this conclusion: “And further, to do, execute, and perform, all and every act and acts, thing and things, which are requisite and necessary for the preservation of the game within the same manor, and the limits thereof, and for the discovery of offenders therein, according to the directions of the statute in such case made and provided.”] In witness whereof, I, the said W. J. S. M., have hereunto set my hand and seal, the — day of —, in the year of our Lord, 18—.

Signed, sealed, and delivered in the presence of —.

The lord of a hundred or wapentake cannot grant a deputation to a gamekeeper (a): a college or corporation may. And it is said, in Comyn's Digest, that a hundred with a leet was a royalty, within 22 & 23 Car. 2, c. 25. The deputation or appointment must be on a 35s. stamp, and must be registered with the clerk of the peace, who on the payment of 5s. will give a certificate of such registration.

The seizure of dogs, guns, &c. is a ministerial act, and need not be done by the gamekeeper himself, but may be done by another under his immediate direction (b); but not under a general authority (c). The dog or engine seized may be destroyed, as it becomes the property of the lord of the manor (d).

In the case of *Grant v. Hutton*, 1 B. & A. 134, where it appeared that a gamekeeper was authorized by his deputation to seize greyhounds, setting dogs and ferrets, and to do all things belonging to

(a) See 1 Arch. J. P. 435.

(b) *Bird v. Dale*, 7 Taunt. 570.

(c) Locke's G. L. p. 20.

(d) *Kingsworth v. Bretton*, 5 Taunt. 416.



the office of a gamekeeper, according to the directions of the Acts of Parliament, it was held that he was not thereby authorized to seize hounds.

The lord of a manor cannot seize the gun of a gamekeeper of another lord, although he be upon the manor of the first without authority (*e*).

A gamekeeper cannot seize a gun unless the unauthorized person be using it at the time to kill game (*f*); and likewise he cannot kill a dog following game within the boundaries of the manor, unless it become unavoidably necessary, in order to preserve the life of the game pursued (*g*).

In the case of *Bush v. Green*, 4 Bing. N. C. 49, Lord C. J. Tindal said: "No one is a gamekeeper under 1 & 2 W. 4, c. 32, unless he be registered with the clerk of the peace under it, by section 16, of the same Act."

It must be borne in mind by the gamekeeper, that before he attempts to shoot the dog of another he must not only be satisfied that the person using such dog has not obtained a certificate, but also that he must shoot the dog to save the life of the hare, or other game which the dog is following. And should he not be so satisfied as to the qualification of such person for want, of a certificate, and before he makes a seizure of a dog or gun, &c., used by such person for killing or taking game, it is advisable that he should demand of him a certificate, according to 52 G. 3, c. 93, schedule L., rule 11, already spoken of in this work; and under all circumstances, "when practicable," it is better for the gamekeeper to seize the dog in preference to shooting it, for when seized and found to belong to an uncertificated person, it becomes according to 1 & 2 W. 4, c. 32, s. 13, the property of the lord of the manor, for which such gamekeeper is deputed, and on which manor he is then acting as such deputed gamekeeper. Great caution should be used before destroying the property of another. The author of this work has known a notorious poacher take out a certificate in another county, and therefore his name would not be published in the list for the county of York if he had taken out a certificate in the county of Durham, and by such means the gamekeeper would act in ignorance, and might be made liable to an action for killing the dog; whereas, if he merely seize it no action would lie, because the dog might be restored, and its owner proceeded against under section 6 of 1 & 2 W. 4, c. 32. It may be as well also here to mention, that his authority by such deputation only authorizes the gamekeeper to seize dogs, nets, guns, snares, and other engines and instruments, which are used for the killing and taking of game within the manor for which he is deputed at the time the party is using them for that purpose (*h*).

A game-watcher not deputed by the lord of such manor, &c., and not registered with the clerk of the peace for the county, &c., has

(*e*) *Rogers v. Carter*, 2 Wills. 378.

(*f*) *Wingfield v. Stratford*, 1 Wils.  
315.

(*g*) *Vere v. Lord Candor and an-*

*other*, 11 East, 568, and notes by Mr. Locke in his G. L. 21.

(*h*) *Wingfield v. Stratford*, 1 Wils.  
315; *R. v. Gardiner*, 2 Stra. 1098.



no power to seize dogs, except under the immediate direction of a deputed gamekeeper (*i*) Yet such game-watcher may apprehend trespassers according to section 31 of 1 & 2 W. 4, c. 32, already spoken of.

*Certificate.*] To enable a person to kill game, he must take out a certificate, for which he pays 3*l.* 13*s.* 6*d.*, or if a gamekeeper, 1*l.* 5*s.*

The game certificate duty seems to be a strictly personal tax, and may be paid at any place in great Britain at the option and convenience of the person wishing to pay it. All other taxes have reference more or less to locality; so that a person may return a list of all the taxable things, animals and persons in respect of which he is liable, in the district in which he resides, and take out a game certificate at any other place, no matter how remote from his place of residence (*k*) And by 7 & 8 G. 4, c. 49, persons who have procured game certificates in Great Britain are exempted from the duty on game certificates in Ireland, and persons who have paid the duty on game certificates in Ireland, imposed by 56 G. 3, c. 56," are authorized to kill game in Great Britain, on paying the difference between the Irish and English duties.

A demand for the production of a certificate from such person can be made by any assessor or collector of the parish, or by any commissioner acting for the county, or by any lord or lady or gamekeeper of the manor, royalty or lands wherein such person shall there be, or by any inspector or surveyor of taxes for the district, or by any person duly assessed to the game duties, or by the owner, landlord, lessee, or occupier of the land in which such person shall there be. The demand need not be *on* the land on which the person does the act, but it must be made so immediately after he has left it as to form a part of the same transaction. And the person making the demand need not produce his certificate. It must also be here understood that the penalty in this case will not be incurred by the mere refusal to produce the certificate, the person must also refuse on request to tell his Christian and surname and place of residence (*l*).

An information laid under the 13th rule of schedule L. of the 52 G. 3, c. 93, for sporting without a certificate, within three months after the offence was committed; the offender may be brought up to answer the charge at any time during the lifetime of the magistrate by whom the information was received, but should a summons be taken out against the offender, and he abscond before the summons can be served upon him, the best course to pursue would be to return the summons and obtain a warrant for his apprehension, which warrant would remain in full force until the offender was apprehended, or during the lifetime of the magistrate granting the same. An uncertificated person killing, or taking, or using any dog, gun, net, or other engine or instrument, for the pur-

(*i*) *Bird v. Dale*, 7 Taunt. 570.

(*k*) Bell on Game Laws, 240.

(*l*) See Bell on Game Laws, p. 198.  
Also see *Molton v. Rogers*, 4 Esp. 215.



pose of searching for, or killing or taking game, incurs a penalty not exceeding 5*l.* before two justices (*m*).

And also by section 30 of the same Act, he incurs a penalty of 2*l.* for the trespass; and also by the third section of this Act a penalty of 5*l.* for killing game on a Sunday, or Christmas-day, or for attempting to do so, before two magistrates. Mr. Bell, in his Game Laws, states, that a person killing or attempting to kill woodcocks, snipes, quails, or landrails, or wild ducks, widgeons, teal, or conies on a Sunday or Christmas-day, would not be liable to the penalty under the 3rd section. He also incurs a penalty of 20*l.* by 52 G. 3, c. 93. He is also subject to a charge of double the duty on a game certificate, viz. 8*l.* 1*s.* 8*d.*

With reference to others assisting to kill or take any game, or any woodcock, snipe, quail, landrail, or coney, by the 54 G. 3, c. 141, such other persons may aid or assist to kill or take such game, &c., as aforesaid, provided it shall be done in the company or presence, and for the use of another person who shall have obtained a certificate in his own right, and who therein shall by virtue of such certificate then and there use his own dog, gun, net, or other engine, and who shall not act by deputation or appointment; but a person who has not taken out a certificate, with his own dog accompanying another person who has a certificate, and coursing or sporting therewith, such first person is liable to a penalty of 20*l.* The lord of a manor has power to authorize his gamekeeper to seize all such dogs, nets, and other engines (a gun is an engine) as may be used within the manor by any person not authorized to kill game for want of a certificate; he has also authority to make such seizure himself. But neither himself nor his gamekeeper has a right to seize the dogs of a person who has a certificate, and still less to destroy them, notwithstanding the liability of their owner for the trespass (*n*). With respect to the seizure of dogs used by persons having no certificate, it seems he has the same right to destroy such dogs as a magistrate had under the 5 Anne, c. 14, in regard to the dogs of unqualified persons (*o*). And the 13th section of the new statute authorizes the seizure of the dog, for the use of the lord of the manor; and such an authority, it has been held, implies a right to destroy it (*p*),

Penalty for a witness not attending after having been duly summoned, 10*l.*, by the 52 G. 3, c. 93.

The provisions of the 52 G. 3, c. 93, that the convictions for sporting without game certificates shall be entered and registered with the clerk of the peace, are directory only: and where this has been omitted the conviction is not therefore void; but the convicting magistrate may be liable to punishment for not complying with the directions of the statute (*q*).

(*m*) See 1 & 2 W. 4, c. 32, s. 23.

(*n*) *Vere v. Lord Cawdor*, 11 East, 568.

(*o*) *Kingsworth v. Bretton*, 5 Taunt.

416; *Roy v. Duke of Beaufort*, 2 Atk. 190; 2 Bla. Com. 417.

(*p*) See Deacon's Game Laws, 60.

(*q*) *Mason v. Barker*, 1 Car. & Kir. 100.



*Trespass in pursuit of game.*] Any person entering upon the land of another in pursuit of game or otherwise, is liable to an action of trespass (*r*). Lord Holt has said, "If A. start a hare in the ground of B., and hunt and kill it there, the property continues all the while in B. But if A. start a hare in the ground of B., and hunt it into the ground of C., and kill it there, the property is in A. the hunter, but A. is liable to an action of trespass for hunting in the ground as well of B. as of C." (*s*).

The statute 1 & 2 Will. 4, c. 32, s. 31, enacts, That where any person shall be found in any land, or upon His Majesty's forests, parks, chases, or warrens, in search of game or woodcocks, snipes, quails, landrails, or conies, it shall be lawful for any person having the right of killing the game upon such land, by reservation or otherwise, or for the occupier of the land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any person authorized by either of them, to require the person so found forthwith to quit the land wherein he shall be so found, and also to tell his Christian name, surname, and place of abode; and if such person shall, after being so required, offend by refusing to tell his real name or place of abode, or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery, or by wilfully continuing or returning upon the land, it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order or in his aid, to apprehend such offender, and to convey him or cause him to be conveyed before a justice of the peace, and such offender (whether so apprehended or not) upon being convicted of any such offence before a justice of the peace, shall forfeit and pay such sum of money not exceeding 5*l.*, together with the costs of the conviction; provided always, that such person so apprehended shall be brought before some justice of the peace within the space of twelve hours, otherwise such person must be discharged, but may be proceeded against for his offence by summons or warrant, as if no such apprehension had taken place, but the person to be apprehended must be caught not only upon the land but in search and in pursuit of game, "and with or without a game certificate." The moment he is off the land all power to seize him ceases without a warrant.

But where a man was on a public road, the land on both sides of which belonged to the lord of the manor, and having a dog and gun with him, he sent the dog into a cover at one side of the road, and immediately a pheasant flew across the highway, and the man fired at it but did not kill it: it was holden that a person, to be guilty of a trespass in pursuit of game must actually enter or be upon the land, yet the highway in this case was the land of the lord of the manor (subject only to the user of it as such by the public) and the man's being upon it in search of game, was a trespass within the statute (*t*).

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(*r*) See 2 Bac. Abr. 613

(*s*) See Lord Holt, in *Sutton v Moody*, 1 Ld. Raym. 251.

(*t*) *R. v. Pratt*, 24 Law J. 113.



And also, by the 36th section, all game that shall be found upon such person, and which appears to have been recently killed, may be demanded from such person, and in case such person shall not immediately deliver up such game it shall be lawful to seize and take such game from him, for the use of the person entitled to the game upon such lands, &c.

It may be as well to notice here, that woodcocks, snipes, quails, landrails, or conies cannot be seized.

Also, should such person, having obtained a game certificate (and the person demanding the same shall also have obtained a game certificate), wilfully refuse to produce and show a certificate issued to him for that purpose, or in default thereof as aforesaid to give to the person so demanding the same his Christian and surname and place of residence, and the parish or place (if any) in which he shall be assessed, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment, every such person shall forfeit and pay the sum of 20*l*.

As to what is a using of a gun or dog, for the purpose of searching for, or killing, or taking game, evidence that the party was seen walking about a field with a gun, accompanied with a pointer or setting dog, apparently in quest of game, will be sufficient proof that he used the gun for the purpose of killing game, and the dog for the purpose of searching for it (*d*). So the using a gun for the purpose of killing game will be sufficiently established by proving that the party was beating about for game, and was observed to fire off his gun; or that he pointed his gun at a partridge, though he did not actually fire at it (*e*).

A party may be a trespasser within the meaning of the 1 & 2 W. 4, c. 32, by entering or being upon a highway in search or in pursuit of game, as the public have only the right of using a highway for the purpose of passing and repassing along it, and if they use it for any other purpose they become trespassers; and the enactment is not confined to trespassers upon inclosed lands, but extends to trespassers upon any land in search or pursuit of game, &c. And *à fortiori*, the enactment extends to trespassers upon the waste lands at the side of a highway, which belong to the persons in whom the soil of the highway is vested (*f*).

By the 1 & 2 W. 4, c. 32, s. 36, the owner or his servant, &c., may seize all the game in the trespasser's possession, whether killed on the land or not. The demand must be made on the party while he is on the land. If he resist the delivery up of the game, and use force, force may be opposed to him, but no more force than is requisite to compel the delivery up of the game.

It will be observed that the form of the conviction as given by the 1 & 2 W. 4, c. 32, s. 39, is the same whether or not the defendant makes default in his appearance.

It seems that if a person discharge a gun from the outside of a field into it, so as that the shot strike the soil, he is guilty of break-

(*d*) See *R. v. Kay*, Sess. case, 88.

(*e*) *R. v. Davies*, 6 T. R. 177; *Hebdon v. Hartley*, 1 Chit. Rep. 607.

(*f*) See 1 Arch. J. P. 459.



ing and entering the field (*g*). But it appears he is not liable under the 1 & 2 W. 4, c. 32, called the New Game Act, as a trespasser therein in pursuit of game; as the enactment, it is apprehended, does not extend to a constructive entry. A party for such an act would be liable to an action of trespass (*h*).

The Game Act being a penal Act should accordingly be construed strictly (*i*). If an action be brought for a trespass committed, after notice not to trespass, there is no necessity for the judge to certify, in order to enable the plaintiff to recover his costs, although he recover less than 40s. damages, as the case is then under the 3 & 4 Vict. c. 24, s. 3 (*k*). Proper notice should be personally delivered to the party offending, for form of which see Deacon's Game Laws, p. 202.

The amount of the damages to be given in an action must depend on the nature of the case submitted to the jury. In trespass for breaking and entering the plaintiff's close and sporting there, under circumstances of aggravation, the jury gave 500*l.* damages; the court refused to set aside the verdict (*l*). This was an action of trespass for breaking and entering the plaintiff's closes, and with dogs and guns beating and hunting for game. The defendant suffered judgment to go by default, the damages to be assessed before a judge of assize, which were assessed accordingly, before Heath, J., at the Thetford Spring Assizes, 1814, to the amount of 500*l.*, being the extent of the damages laid in the declaration. On motion for a rule to set aside the verdict, on the ground of excessive damages, Heath, J., briefly stated the circumstances, which were, that the defendant, who was a magistrate, had committed a trespass before the plaintiff's face, in defiance of the plaintiff's notice; that he was a trespasser, and accompanying the injury by every kind of insult and aggravation; Gibbs, C. J., said, "When a man disregards the conduct and principles of a gentleman and of a magistrate, what is to prevent the repetition of such conduct but large damages? What should we say to a man in any inferior station in life who should so conduct himself? I know not on what principle we could grant a rule in this case, except on the ground that the jury should only have found to the amount of the actual pecuniary damage sustained by the plaintiff. Suppose I had a walk before my house, which I had a pleasure in looking at, or in walking upon, should it be allowed that a man should walk there to my annoyance, and then offer me a half-penny in satisfaction, alleging that I had received no actual damage." Rule refused.

*Night-poaching.*] The night shall be considered to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise (*m*).

(*g*) *Pickering v. Rudd*, 4 Camp. 220; 1 Stark. N. P. 58; S. C. per Ellenborough, C. J.

(*h*) See 1 Arch. J. P. 453.

(*i*) *Haywood v. Horner*, 5 B. & Ald. 17.

(*k*) See *Bourne v. Alcock*, 5 Jurist, 660; and 7 Jurist, 553; Q. B. 13th May, 1843,

(*l*) *Merest v. Harvey*, 1 Marsh, 139; 5 Taunt. 442.

(*m*) 9 G. 4, c. 69, s. 12.



By 9 G. 4, c. 79, ss. 1, 2, If any person bynight unlawfully take or destroy any game or rabbits in any land, whether open or inclosed, or shall by night unlawfully enter or be in any land, whether open or inclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, he may be apprehended by the owners or occupiers of such land, or by any person having a right or reputed right of free warren, or free chase therein, or by the lord of the manor, or reputed manor, and also by any gamekeeper or servant of any of the persons herein mentioned, or any person assisting such gamekeeper or servant, and to deliver him as soon as may be into the custody of a peace officer, in order to his being conveyed before two justices of the peace, and upon conviction thereof, be committed for the first offence, for any period not exceeding three calendar months to hard labour, and to find sureties, himself in 10*l.*, one surety in 10*l.*, or two in 5*l.* each, for his not offending so again for one year next following; and in default of such sureties as aforesaid to be further imprisoned for six months to hard labour; and for a second offence such person shall be committed as above for any period not exceeding six months with hard labour, and at the expiration of such period to find sureties as aforesaid, himself in 20*l.*, and two sureties in 10*l.* each, or one surety in 20*l.* for his not so offending again for the space of two years next following, and in default of such condition as aforesaid to be imprisoned to hard labour for one year; and for the third offence be guilty of a misdemeanor, and liable to be transported for seven years, or be imprisoned for not more than two years. And in case such offender shall assault or offer any violence with any gun, cross-bow, fire-arms, bludgeon, stick-club, or any other offensive weapon whatsoever, towards any person hereby authorized to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and be liable to be transported for seven years, or be imprisoned for not more than two years.

A party thus offending may be also indicted under the 9 G. 4, c. 31, s. 25, for committing an assault with intent to resist or prevent his lawful apprehension; in which case he may be imprisoned to hard labour for two years; and if the assault is committed with a deadly weapon, and the party assaulted is either shot at, stabbed, cut or wounded by the offender, he may then be prosecuted as for a capital offence under the 12th section of the statute (*n*).

A person employed as a watcher by the lord of the manor, without any written authority, may apprehend (*o*). By sect, 9 of 9 G. 4, c. 69, If three or more persons together shall offend as aforesaid, they shall be liable to be transported for fourteen years, and not less than seven years, although such persons did not assault such person authorized as aforesaid. A large stone is an offensive weapon within the statute (*p*).

Any offensive weapon whatever is held to mean any thing capable of being so used and of inflicting bodily injury, under the 2nd section,

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(*n*) See Deacon's Game Laws, 72.

(*o*) *Rex v. Price*, 7 C. & P. 178.

(*p*) Bell's Game Laws, 183.



if the jury be satisfied that such weapons were brought and used by the defendant for that purpose (*q*).

Prosecutions to be commenced within six months. The offender must be found upon the land or he cannot be apprehended (*r*). The word "found" was held to mean having been seen or discovered (*s*).

Going out with intent to destroy rabbits is not an offence within this statute, they must be actually taken or destroyed to constitute the offence. Pursuing game or rabbits with dogs is not within the statute.

The conviction under 9 G. 4, c. 69, s. 1, ought to state that the defendant entered or was in the close for the purpose of taking game THERE, and it is not sufficient to follow the words of the statute (*t*).

To support a charge of night poaching by three or more, armed, under the stat. 9 G. 4, c. 69, s. 9, it is not necessary that all the persons charged, or even three of them, should have been actually on the land, and if it be shown that all the defendants were at the time associated and engaged in pursuing the common purpose and object of taking game by some of them going armed into the field, and there beating for game, while others rendered them aid by remaining outside of the field, that is sufficient (*u*). So, if persons to the number of three or more, armed, are together in one party in land, for the purpose of destroying game there, and the land consists of several closes, and one of such persons be in one close, and another in a different close of the same land, they may be convicted under this statute (*x*).

The following observations on this statute, 9 G. 4, c. 69, s. 9, are taken from the *Justice of the Peace*, No. 32. vol. ix. 1845,—It was always a subject of some surprise to us that a constructive arming should not be deemed sufficient under the 9 G. 4, c. 69, s. 9. The statute enacts, "That if any persons to the number of three or more together, shall by night unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, cross-bow, fire-arms, bludgeon, or any other offensive weapons," &c. The words of the repealed statute, 57 G. 3, c. 90, s. 1, were, "If any person or persons . . . armed with any gun," &c. Under this last statute it was held in *R. v. Smith*, Russ. & Ry., C. C. C. 368, that if one out of several night poachers was armed, that was sufficient to bring all the parties within the statute: it was a being armed constructively in every one of them. This was decided by the judges in the Exchequer chamber. Why then under the 9 G. 4, c. 69, s. 9,—which expressly enacts, that if *any one* of three or more night poachers be armed, all shall be guilty of misdemeanor,—it should be

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(*q*) *R. v. Price and others*, 7 C. & P. 803.      Mag. Ca. 16. *Fletcher v. Calthorp*, 14 L. J. m. 49.  
 (*r*) *Rex. v. Curnock*, 9 C. & P. 730.      (*u*) *R. v. Whittaker*, 12 J. P. 612;  
 (*s*) *Attorney-General v. Delano*, 1 Price, 383.      2 C. & K. 636.  
 (*t*) *Re Fletcher*, 13 L. J.; N. S., 192, m.      (*x*) *R. v. Hezzell et al.*, 20 Law J.



held that all must be armed, it is not very easy to assign a reason. The judgment of Patteson, J., in *Reg. v. Davis and Griffiths*, 8 C. & P. 759, in which he seems to have held this doctrine, is not very clear it must be admitted. In that case the indictment charged that the two prisoners and another person entered certain lands, &c., in search and pursuit of game, "the said Edward Davis and the said William Griffiths then and there being armed." The evidence was, that the other person who was not taken had a gun, but that the prisoners were unarmed. Patteson, J., said, "I think that under the statute 9 G. 4, c. 69, constructive arming is not sufficient. In the present indictment you state that these two men were armed, and the proof is that neither of them were so. The allegation is not proved, and the case therefore fails." The prisoners were acquitted. We are disposed to think the learned judge did not mean to say, that if it had been laid in the indictment all were armed, and proof given therein that one was armed, it would not have been sufficient: but that he considered the allegation in the indictment and the proof should correspond; that one of the persons indicted and charged to be armed, should have been also proved to have been armed; whereas three are charged to have been on the land, and only two of them to be armed, and the proof was that those two were not armed, but that the other person was armed. However this may be, this case always seems to have been taken as a decisive authority, that under the 9 G. 4, c. 69, constructive arming, or rather being armed constructively, was not sufficient, and so it was considered according to the report as given in 1 Car. & Kir. 724, *Reg. v. Goodfellow and others*, decided this year in the Exchequer chamber by the fifteen judges. There, eight defendants were indicted under the Act, that they being armed with guns and other offensive weapons, entered certain lands, &c., two of them were armed each with a gun, and the other six with bludgeons. It was objected that a constructive arming was not sufficient, and that the weapons in each case ought to have been stated, and that as the proof was that two only were armed with guns, the case failed as to any defendant not armed with a gun. Coleridge, J., reserved the point, a verdict being taken against all the defendants. Subsequently the case was decided by the fifteen judges, who held the conviction right, and that if any one of the defendants had a gun, all were armed within the meaning of the 9 G. 4, c. 69. s. 9, overruling, says the report, the case of *Reg. v. Davis*, 8 C. & P. 759.

It may be prudent to remark here, that when parties are committed for trial under the 9 G. 4, c. 69, under any section whatever, no costs are allowed for the prosecution, unless the party duly authorized to apprehend such offenders be assaulted with intent to resist or prevent such apprehension, and the assault is committed with a deadly or offensive weapon, and the party assaulted is either shot at, stabbed, cut, or wounded by the offender, he may then be prosecuted as for a capital offence, which, of course, carries costs. It appears also, a peace officer may assist such parties as already named in the apprehension of such offenders, and any assault committed upon him would be an assault upon him in the execution of his duty as a peace-officer, and the costs of such prosecution would be allowed by the court either at the sessions or assizes.



In a case at York assizes or Winter gaol delivery, December, 1845, Vincent Simpson was indicted for an assault upon police constable Coulthard, and convicted and sentenced to twelve months' imprisonment. It appeared Coulthard was assisting a game watcher to apprehend night poachers; that Simpson was proved, along with two others unknown, to have entered a certain plantation by night, and there to have set thirty snares; and that he was seized by the constable, Coulthard, in the presence of the game watcher, when the assault complained of was committed. Platt, B., who consulted Erle, J., held that a constable had a perfect right to apprehend any person about to commit a misdemeanor, and that if the jury believed the prisoner knew at the time he committed the assault that Coulthard was a constable, he might be convicted of an assault upon a peace-officer in the execution of his duty.

The writer begs to submit that, if the constable were present, it would be better to allow the game watcher or other person authorized to seize the night poacher first, and if then an assault was committed upon such watcher or other person so authorized, the constable should declare aloud he was a peace-officer, and show his staff of office, and if in uniform as such officer so much the better, he would without a shade of doubt, be acting then in the execution of his duty in apprehending such offender. The 9 G. 4, c. 69, s. 2, directs such persons to be handed over to a peace-officer.

Also by stat. 7 & 8 Vict. c. 29, "An Act to extend an Act of the ninth year of King George the Fourth, for the more effectual Prevention of Persons going armed by Night for the Destruction of Game," after reciting that an Act was passed in the ninth year of the reign of His Majesty King George the Fourth, intituled an Act for the more effectual Prevention of Persons going armed by Night for the Destruction of Game, whereby it is enacted that if any person shall, after the passing of the said Act, by night unlawfully take or destroy any game or rabbits in any land, whether open or inclosed, such offender should, upon conviction thereof before two justices of the peace, be liable to be punished and to find surety for good behaviour as in the said Act specified: and it was further thereby enacted, that if any person should be found upon any land committing any such offence as is hereinbefore mentioned, such person might be seized and apprehended and committed to custody, and in case of any assault or violence, should be punished, as in the said Act is set forth; and whereas the provisions of the said Act have of late years been evaded and defeated, by the destruction by armed persons at night of game or rabbits, not upon open or inclosed lands, as described in the said Act, but upon public roads and highways, and other roads and paths leading through such lands, and also at the gates, outlets, and openings between such lands and roads, highways and paths, so that not only has the destruction of game or rabbits not been prevented, but the risk of murder and other grievous offences contemplated by the said Act has been increased, and great danger and alarm occasioned to persons using such roads, highways, and paths; and it is expedient that the remedies provided by the said Act against such offences as hereinbefore mentioned should be extended and applied to the like offences committed upon such roads, highways, and paths: be it there-



fore enacted, that from and after the passing of this Act all the pains, punishments, and forfeitures imposed by the said Act upon persons by night unlawfully taking or destroying any game or rabbits in any lands, open or inclosed, as therein set forth shall be applicable to and imposed upon any person by night unlawfully taking or destroying any game or rabbits on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such land into any such public road, highway, or path, in the like manner as upon any such land, open or inclosed; and it shall be lawful for the owner or occupier of any land adjoining either side of that part of such road, highway, or path where the offender shall be, and the gamekeeper or servant of such owner or occupier, and any person assisting such gamekeeper or servant, and for all the persons authorized by the said Act to apprehend any offender against the provisions thereof, to seize and apprehend any person offending against the said Act or this Act; and the said Act, and all the powers, provisions, authorities, and jurisdictions therein or thereby contained or given shall be as applicable for carrying this Act into execution as if the same had been herein specially set forth.

#### 24. *Gleaning Corn.*

It is a vulgar error to suppose that there is in general a right of gleaning over another's lands; and trespass lies against any person who gleans without the consent of the owner, as no such right exists at common law (a).

#### 25. *Hawkers and Pedlars.*

Every hawker, pedlar, or petty chapman going from town to town, or to other men's houses, and travelling on foot, carrying to sell or exposing to sale any goods, wares, or merchandize, shall pay a duty of four pounds for each year, and every person so travelling with a horse, ass, or mule, or other beast bearing or drawing burthen, the sum of four pounds yearly for each beast, he or she shall so travel with, over and above the said first-mentioned sum of four pounds (b).

Packs, carts, and every place in which trade is carried on, and every handbill or advertisement distributed or published, not having the words Licensed Hawker, together with the number of the licence, name of hawker, &c., in large legible Roman capitals, penalty for each and every offence the sum of ten pounds, or commitment for three months, or until paid, half of penalty to the Crown, and half to the informer: provided always that the justice has a discretionary power to deduct the costs from the penalty before the division between the Crown and the informer; and every such justice or his clerk before whom such person shall have been con-

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(a) *Steele v. Houghton*, 1 H. Bla. 51; *Worledge v. Manning*, *ib.* 53, n.

(b) See 50 G. 3, c. 41, s. 6.



victed shall take and receive Her Majesty's share of the penalty, and shall pay the same at the next general or quarter sessions, into the hands of the clerk of the peace or other officer.

By sect. 6, it is there stated, a duty of 4*l.* shall be paid annually for each horse, &c., yet it would seem by the case of *R. v. Robotham*, 3 Burr. 1472, only one horse licence is required for travelling with several beasts.

Unlicensed hawkers marking packs, &c., as above, penalty and application of the same as above.

Trading without a licence, or refusing to show it on demand to any magistrate, peace officer, officer of excise or custom, penalty and application as above.

If constables or other peace officers shall refuse or neglect, either upon due notice, or upon his or their view, to aid and assist in this act in apprehending such person trading without a licence, or contrary to this Act, on confession, or by the oath of one witness, penalty 10*l.*; application same as above.

Also, witnesses refusing to attend to be sworn, after being duly summoned to give evidence touching any of the matters relative to this Act, penalty 10*l.*

It shall be lawful for any person to seize and detain any such hawker and pedlar, petty chapman, or other trading person as aforesaid, committing any of the aforesaid offences against this Act, for a reasonable time, in order to give notice to a constable or other peace officer. Also the magistrate on conviction of the offender, by warrant under his hand and seal, shall cause the penalty to be levied by distress and sale of the offender's goods and chattels, or of the goods and chattels with which such offender shall be found trading, and the overplus, if any, after deducting the penalty and expenses of the distress and sale, to be returned to the owner (*c*).

The licence to be taken out annually, and which shall remain in force until the first day of August next following the date thereof (*d*).

A licensed hawker can sell in a room in a house, or shop, in a place where he is not resident, provided he do not sell by auction, outcry, knocking down of hammer, candle lot, parcel, or any other mode of sale by auction, or whereby the best or highest bidder is or shall be deemed the purchaser: penalty for any of the last named offences, 50*l.* (*e*).

Sending goods to a town, and there taking rooms for the purpose of selling them or exposing them for sale, and selling them either by sale of public auction or by private sale will render it necessary for the party to have a licence within the meaning of this Act, whether the quantity sent be great or small (*f*).

Whether he go with the goods or send them by another conveyance; whether he go from his own house or place of residence to several other towns, or to one only, or upon several occasions, or upon one only; whether he himself sell them or he employ

(*c*) See 50 G. 3, c. 41, s. 25.

(*d*) Id. s. 2.

(*e*) Id. s. 7.

(*f*) See *Dean v. King*, 4 B. & A. 517.



another to do so (he being there), or whether he sell them on his own account or on commission, as the agent or auctioneer for others (*g*).

*Every other trading person.*] These words extend to the case of all itinerant dealers who sell by retail, how extensive soever their transactions may be, and are not restrained to persons of the same description, as hawkers and pedlars who deal in a small way.

Thus a licensed auctioneer, going from town to town in a public stage coach, and sending goods by public waggons, and selling the same on commission by retail, or by auction at the different towns, is a trading person, within the above sixth section, and must take out a hawker's and pedlar's licence. *R. v. Turner*, 4 *B. & Ald.* 510; *et per Abbot*, C. J., S. C., "The question intended to be submitted to us by the sessions is, whether a licensed auctioneer, conveying goods by a public stage waggon from place to place, and selling them on commission, is to be considered as a pedlar or trading person within the meaning of the 50 G. 3, c. 41; by sec. 6, it is enacted, that there shall be paid an annual duty of 4*l.* by every hawker, pedlar, petty chapman, and every other trading person going from town to town, or to other men's houses, and travelling either on foot or with horses, or otherwise carrying to sell, or exposing to sale, any goods, &c., and a further duty of 4*l.* in respect of every horse or other beast bearing or drawing burthen. Now, it appears to me, that the appellant is a trading person within the meaning of this section; it has been urged that he is not a trader, but an agent selling the goods of others on commission; it is clear however, that agents were meant to be included within the Act of Parliament, for sect. 23 contains an express exception of the particular agents therein mentioned. Now, that exception would be wholly unnecessary, if other agents were not meant to be included within the Act; the defendant in this case is convicted for having no licence at all, and therefore I think the mode of travelling wholly immaterial.

"It has been said, that the conviction cannot be supported in its present form, inasmuch as the ground of it is that the defendant travelled with horses; if it had been found as a fact in the case that the defendant had been convicted for want of a horse licence, I should have thought that the conviction could not be supported; for the horses in respect of which he is bound to take out a licence, are those bearing or drawing burthen, or, in other words, carrying and drawing his goods. The defendant here was convicted for having no licence at all, and I think, therefore, the word horses may be rejected. And, besides, in the way in which the present question is brought before us, we cannot look at the form of the conviction, but merely at the case submitted to us by the sessions. The order of sessions must therefore be affirmed" (*h*).

So also in *R. v. Sutherland*, who was a licensed hawker and

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(*g*) See *Attorney General v. Tongue*, 12 Price, 51; also *Attorney General v. Woolhouse*, 1 Young & J. 463; also *R. v. Turner*, 4 B. & A. 510.

(*h*) See 1 Arch. J. P. 551.



licensed auctioneer from Durham, and who sent drapery goods to Barnard Castle, in the month of August, 1844, to a shop there which had been lately occupied by a draper: those goods he sold by auction. An information was laid by the author of this work, and Sutherland was prosecuted in the court of Exchequer for the penalty of fifty pounds, under sect. 7 of the Act 50 G. 3, c. 41, for selling goods by auction, notwithstanding Sutherland's asserting he had taken the shop in which he sold.

So a person travelling from town to town, and having packages of books, &c., sent after him by the common stage waggon, and taking rooms at each town, and there selling such books, &c., by retail and by auction, is a trading person within 50 G. 3, c. 41; *Dean v. King*, 4 B. & Ald. 517; *et per* Abbot, C. J., I am clearly of opinion, upon the facts of this case, that the defendant was a trading person, travelling from town to town within the meaning of this Act of Parliament" (i). It was there held that if a person travel from town to town with goods, and employ an auctioneer resident therein to sell them for him, the person so travelling from town to town, is a trading person within the meaning of the Act.

It seemed at one time to be supposed, that in order to subject himself to the penalties of the Act, the defendant must have travelled with the goods he had to sell, but it is now settled that the mode of travelling is immaterial (k). A licensed hawker may sell in a hired room, where he is not a householder, provided such selling be by retail and not by outcry, or some mode of sale by auction. *Allen v. Sparkall*, 1 B. & Ald. 100; *et per* Lord Ellenborough, C. J., S. C., "On looking at the 7th section, I think that the words 'by outcry,' &c., or any other mode of sale by auction, govern the meaning of the whole."

"If the clause had stopped at the words, 'any other means or device,' an argument might have been raised, but the general scope is laboriously confined to outcry and sale at auction;" *et per* Abbott, J.

The clause is prohibitory, but the prohibition is confined to persons of a certain description; a hawker is one description of person, a person who sells by retail is another, and neither must sell by auction (l).

Penalties above twenty pounds may be recovered in any of Her Majesty's Courts of Record at Westminster, and penalties under twenty pounds before one or more justices of the county, division, riding, &c., wherein the offence shall be committed.

For non-payment of penalty before justices, where no sufficient distress can be made, not more than three months' imprisonment, and may suffer as a common vagrant, and be committed to the house of correction.

Persons hawking tea are liable to a penalty of ten pounds, whether such person have a hawker's licence or not (m).

(i) And see the case of *The Attorney-General v. Tongue*, E. T. 1823; 12 Price, 51.

(k) 1 Arch. J. P. 551.

(l) 1 Law Mag. 340. See 1 Arch. J. P. 555.

(m) See stat. 10 G. 1, c. 10, s. 14, and 12 G. 3, c. 46, s. 6.



Any person can sell or expose for sale any sorts of goods or merchandize in any public market, mart, or fair, legally established within the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, providing he or she sell on the market day in the market place, and during the market hours (*n*).

Mr. Potts, in his Law Dictionary, states that the establishment of public marts, or places of buying or selling, with the tolls thereunto belonging, is enumerated as one of the King's prerogatives, and can only be set up by virtue of the King's grant, or by long and immemorial usage. It seems the exemption by the 5th section of the 50 G. 3, c. 49, embraces legally established fairs, although such be not a market town.

Also, "Nothing in this Act shall extend to prohibit any person or persons from selling any printed papers licensed by authority; or any fish, fruit, or victuals, nor to hinder the real worker or workers, or maker or makers of any goods, wares, manufactures of Great Britain, or his or her or their servants, children, or apprentices, or known agents, usually residing with such real workers or makers only from carrying abroad or exposing to sale, and selling by retail or otherwise, any of the said goods, wares, or manufactures, of his, her, or their own making, in any mart, market, or fair, and in every city, borough, town corporate, and market town; nor any tinkers, coopers, glaziers, plumbers, harness-menders, or other persons usually trading in mending kettles, tubs, household goods, or harness whatsoever, from going about and carrying with him or them proper materials for mending the same" (*o*).

The officer will here observe that a person cannot hawk goods in a country village without a licence, although of his own manufacture. Barm or yeast is victuals within this exempting clause. *R. v. Hodgkinson*, 10 B. & C. 74, *et per* Lord Tenterden, C. J., "I think that the word 'victuals' in the Act comprises everything which constitutes an ingredient in the food of man, and all articles which, mixed with others, constitute food. Yeast or barm may not perhaps be necessarily used in the making of bread, but it generally is used, and I therefore am of opinion that it is within the exempting clause."

It was formerly supposed, that under the statute 29 G. 3, c. 26, s. 17, and now by 50 G. 3, c. 41, s. 5, hawkers might have exposed their goods for sale on market days in every part of a market town as they might have done before the passing of any of the Hawker's Acts; but in *R. v. Redfearne*, (4 T. R. 273), it was decided that no hawker could expose goods to sale in any part of a market town but the public market place (*p*).

It appears coals are within this exempting clause.

Where the defendant was a servant to a tea-dealer in the county of Worcester, who had been sent about the country by his master, showing samples and collecting orders, and afterwards carrying the parcels about for delivery, according to the orders, the question was, whether this was hawking and pedling, so as to require a licence under the Act. The court was of opinion that the Act applied only

(*n*) 50 G. 3, c. 41.

(*o*) *Id.* s. 23.

(*p*) See 1 Law Magazine, 341.



to those who carried about the goods to be sold and delivered immediately, and not to those who carried about the goods for delivery pursuant to previous order and contract, otherwise a licence would be necessary to legalize the transactions of travellers for London houses: the act was not a carrying to sell, or exposing to sale, within the statute (*q*).

The words "worker" or "real maker" comprehend, not only those who make the articles themselves, but those in whose manufactories they are made by persons in their employment (*r*). A known agent or servant to come within the section, must be such as usually resides with, and forms part of the family of the master manufacturer of the goods sold; one residing with his own family in a different house has been holden not to be within the meaning of this clause (*s*).

The servant, agent, &c., clearly are only privileged to sell in a mart, market, or fair, or in a city, borough, town corporate, or market town (*t*).

Also, wholesale traders in lace, or in woollen, linen, silk, cotton, or mixed goods, or any of the goods or wares or manufactures of Great Britain, and selling the same by wholesale, shall not be deemed to be hawkers (*u*).

By statute 50 G. 3, c. 41, s. 12, Before any person shall receive any licence to trade or travel as aforesaid, he shall produce a certificate, signed by some one clergyman, officiating within the parish, chapelry, or place, wherein such person so applying for such licence has his usual residence; and also by two reputable inhabitants of the said parish, chapelry, or place, attesting that the person so applying is of good character and reputation, and is a fit and proper person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman.

I would just remark here, this section ought to be fully carried out with regard to the certificate of character.

The certificate so to be produced as aforesaid, should be in the form, or to the effect following, *ib.* s. 13:—

We, A. B. the minister, and C. D. and E. F. being two householders residing at — in the parish, chapelry, or otherwise, [as the case may be] of — in the county of —, do hereby certify that G. H. hath been known to us for the space of — years last past, and during all that time hath usually resided in the said parish, chapelry, or otherwise, [as the case may be], of — and is a person of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman. Dated the — of —.

A. B. Minister.

C. D. }  
E. F. } Householders.

(*q*) *R. v. Knight*, 10 B. & Cress. 734.

(*r*) *R. v. Farraday*, 1 B. & Ad. 275.

(*s*) *R. v. Mainwaring*, 10 B. & C. 66.

(*t*) See *R. v. Websdell*, 2 B. & C. 136.

(*u*) See 52 G. 3, c. 108, s. 1.



It is a well known fact that some of the first rate thieves take out a licence for a protection in travelling from place to place to put their unlawful practices into execution, and also the goods they carry have been stolen by another thief, and fenced or sold to them for half value. If watches, they very probably have been christened and churchied, (as will be fully explained in this work,) after which operation on the goods, detection is almost impossible. A question may arise here with my readers, "How do these swell mob gentlemen procure the certificate of character necessary to obtain a licence?" I will here state an instance which came under my own individual view. A person, whose real name was John McGoran, was apprehended by myself for picking a woman's pocket to the amount of 71*l.*; he was transported for ten years at the special assizes, held at York, December, 1843; on his person were found a hawker's box and a hawker's licence, obtained by him at South Shields, without a certificate of character, he having obtained from John Thompson, another hawker, (who wore an outward good character, "but who was in reality a notorious fence," an old licence. When such licences are produced at any stamp office, a new one is at once granted without the certificate of character, and John McGoran becomes John Thompson, licensed hawker, which is used to act as a stimulant upon the unwary, and a protection against the police. A change in the law is here highly necessary.

Also by statute 50 G. 3, c. 41, s. 16, If any hawker, pedlar, petty chapman, or other trading person aforesaid, shall be convicted of knowingly dealing in, vending, or selling any kind of smuggled, contraband, or prohibited goods, wares, merchandize, or knowingly dealing in, vending, or selling any goods, wares, or merchandize, fraudulently obtained or dishonestly procured, either by themselves or through the medium of others, with their privity and knowledge, every such hawker, trading person, &c., shall from and after such conviction forfeit his licence, and for ever thereafter be incapable of obtaining or holding any new licence, or dealing, trafficking, or trading under the same:

And by section 19, no person can lend or let out to hire, nor trade with any licence, in which his or her own real name shall not be inserted as the name of the person to whom the same is granted. Penalty 40*l.*

Provided always, that nothing herein contained shall subject to the said penalty any servant travelling for a licensed master, with the licence of such master, and for his benefit, or any licensed master sending such person to travel with such licence (*v*).

We will now notice very briefly that it is not enough to bring the offender within the description of the statute by merely alleging that he sold as a hawker and pedlar, at a place and time specified, but it must be proved he went either from town to town, or from house to house, or some sufficient overt act of trading (*w*).

But on a person being apprehended for trading as a hawker and pedlar, and charged upon oath before the justice with having sold a

(*v*) See *Hodgson v. Flower*, 2 Camp. 290.

(*w*) See Paley on Convictions, p. 99.



piece of muslin as a hawker, pedlar, and petty chapman, which fact he confessed: this was held to be sufficient to warrant a conviction for not producing a licence on demand by the justice (x).

Selling, offering for sale, publishing, distributing, or placarding any paper without the printer's name, penalty 5*l.*, for each copy. To be recovered by information in the name of the Attorney or Solicitor General (y).

26. *Highways, Turnpikes.*

*Cattle straying*, 329.  
*Drivers, &c.*, 334.

*Nuisance. how abated*, 335.  
*Toll*, 339.

*Cattle straying.*] By stat. 5 & 6 W. 4, c. 50, s. 74, and be it enacted, that if any horse, ass, sheep, swine, or other beasts or cattle of any kind shall at any time be found wandering, straying, or lying, or being depastured on any highway, or on the sides thereof, without a keeper (except on such parts of any roads, as lead or pass through or over any common, or waste or uninclosed ground), any surveyor, or any other person authorized by him, is hereby required to seize and impound every such horse, &c., in the common pound (if any) of the parish, where the same shall be found, or such other place of safety as may or shall be provided, and the same there to detain, until the owner thereof shall, for every and each horse, &c., pay any sum not exceeding one shilling, together with reasonable charges and expenses (such charges to be settled by any two justices of the peace), the said sum so paid for each beast, &c., to be applied to the repair of the said highway; and in case the said penalty, charges and expenses shall not be paid within five days after such impounding, (notice thereof being first given to the owner, if known at the time) it shall and may be lawful for any two justices of the peace to order every such horse, beast, &c., to be sold; but should it be proved that the straying, &c., arose from accident, and was not wilful, in which case such justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty and charges and expenses of impounding, keeping, selling, &c. of such beasts or cattle, &c., shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale, within one calendar month after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expenses in the same manner as the said penalty of one shilling is herein directed to be applied. Provided always, that no owner of any horse, &c., or cattle impounded as aforesaid, shall in any case pay more than the sum of twenty shillings, over and above the charges and expenses of impounding and keeping the same, for any number of horses, &c., or other beasts impounded at one time.

Sometimes a difficulty arises with reference to persons depasturing cattle on sides of the highways, and attending to the cattle with a keeper. If the highway is part of a manor, it is quite clear in law

(x) *R. v. Smith*, 3 Burr. 1475,

(y) 2 & 3 Vict. c. 12.



that none but the copyholder can have a right to depasture their cattle on the sides thereof, either with or without a keeper ; if the soil of the highway is the soil of the owners of the adjoining lands, it is equally clear that no person can have the right to depasture cattle thereon, but with the leave of the owner of the soil ; and such offender may be summoned for a trespass under 7 & 8 G. 4. c. 30, s. 24 (a).

Also with regard to fowls trespassing in another's garden, and doing damage therein, the 7 & 8 G. 4, c. 30, s. 24, is applicable when occasioned by the wilful neglect of the owner of the fowls. If a man wilfully suffer his beasts or fowls to injure the property of another, that is the same thing as if he had done the injury by his own hand. The complainant should be in a position to prove that he had previously given the owner of the fowls notice of the injury done by them, so as to bring the wilfulness home to him (b).

The following form may be used relating to cattle seized on a highway, and should be renewed as often as the surveyor is changed.

North Riding } I, the undersigned, being the surveyor of the  
of Yorkshire, } highways duly appointed for the township of ———,  
to wit. } in the parish of ———, in the North Riding of York-  
shire, do hereby authorize and require ———, of ———, superintendent  
of police, and all other persons acting by his order and in his aid, to  
seize and impound every horse, ass, sheep, swine, or other beast or  
cattle, found wandering, straying, or lying, or being depastured on  
any highway, or on the sides thereof, within the township of ———  
aforesaid, in the riding aforesaid, in the common pound at ———, or  
such other place as he the said ——— may provide for that purpose, and  
the same there to detain, until the owner thereof shall, for every  
and each horse, ass, sheep, swine, or other beast or cattle so im-  
pounded, pay any sum not exceeding one shilling, together with rea-  
sonable charges and expenses, (such charges to be settled by any two  
of Her Majesty's justices of the peace, acting in and for the said  
riding) of impounding and keeping the same; and in case the said  
penalty, charges, and expenses shall not be paid within five days after  
such impounding (notice first being given to the owner, if known at  
the time), it shall and may be lawful for the said ——— to apply to  
two justices of the peace for an order to sell every such horse, ass,  
sheep, swine, or other beast or cattle, according to the statute 5 & 6  
W. 4, c. 50, s. 74.

April——, 18——.

Signed, ———, Surveyor.

It was the practice of the author of this work, to cause the following notice to be liberally distributed on such roads and public places, which he found to be of much service as a preventive.

Caution.—Take notice, that if any horse, ass, mule, sheep, swine, or other beast of any kind, shall be found tethered or wandering, straying, or lying, or being depastured on any highway, or on the sides thereof, in the division of ———, will be seized after this notice, and a penalty of one shilling each inflicted on the owner of such

(a) See J. P. No. 18, vol. vii. p. 249.

(b) See J. P. No. 16, vol. x. p. 351.



cattle: and if found upon any turnpike road in the said —, a penalty of two shillings each upon the owner of such cattle, together with all expenses attending the impounding of the same, in each and both cases.

And if the said penalty, charges and expenses, shall not be paid within five days after such impounding, such cattle will be sold, according to the statutes 5 & 6 W. 4, c. 50, s. 74, and 3 G. 4, c. 95, s. 75. By order of the Bench, R. L. SNOWDEN, *Superintendent of Police*.

*Police Office, Thorpe Grange, 1846.*

And by statute 4 G. 4, c. 95, s. 75, and be it further enacted, that if any horse, ass, sheep, swine, or other beast, or cattle of any kind, shall at any time be found tethered, or wandering, straying or lying about any turnpike road, or any part thereof (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground), it shall and may be lawful for any surveyor of the road, when the same shall be found, or any other person or persons whomsoever, to seize and impound every such horse or cattle, &c., in the common pound (if any) of the parish, township, tithing, or place where the same shall be found, or in such other place as the trustees or commissioners of the road where the same shall be found, shall have provided or shall provide for that purpose, and the said horse or other cattle, &c., there to detain until the owner or owners thereof shall for every such horse or other cattle, &c., so impounded, pay the sum of 2s., together with reasonable charges and expenses of impounding and keeping the same, to the treasurer, clerk, or surveyor, of the road on which the beast or cattle, &c., so impounded shall have been found, the said sum of 2s., for each beast, to be applied to the use of and in aid of the tolls of such road: and in case the said penalty, charges, and expenses, shall not be paid within five days after such impounding (notice thereof being first given to the owner, if known at the time, or if not known, by affixing written notices at the two next toll gates, on the road nearest to the place where the same shall be impounded), it shall and may be lawful for any one or more justices of the peace of the county or place where the offence shall have been committed, to order every such horse, or other beast or cattle, &c., to be sold, except where it shall be made to appear to such justice or justices that the horse, &c. impounded, escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner or occupier of such inclosure, or employed by such owner or occupier, in which case such justice or justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty, and charges and expenses of impounding, keeping, and selling every such horse, or other cattle, &c., shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale within twenty-one days after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expenses, in the same manner as the said penalty of two shillings is hereinbefore directed to be applied: provided always, that no owner of any horses or other cattle, &c., impounded



as aforesaid shall in any case pay more than the sum of five pounds, over and above the charges and expenses of impounding and keeping the same, for any number of horses, asses, sheep, swine, or other beasts or cattle, &c., impounded at one time; and provided always that nothing in this clause shall be deemed, taken, or construed to extend to take away any right of pasturage which may exist on the sides of any turnpike roads.

Any person releasing or attempting to release from the pound any horse, ass, sheep, swine, or other beast, or cattle seized for the purpose of being impounded, or securing or attempting to rescue any distress seized under this Act, until or before such horse, &c., seized or impounded or distress made, shall be legally discharged by due course of law, or damage any lock, bolt, &c., of such pound, or pull down the wall thereof, every person so offending, shall, upon conviction thereof before any two of Her Majesty's justices of the peace, forfeit and pay any sum not exceeding twenty pounds; and in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months (c).

It must be observed that by the Highway Act, 5 & 6 W. 4, c. 50, s. 75, the penalty for pound-breach, rescue, or pulling down, or damaging any lock or bolt, &c., of such pound is twenty pounds, before two justices, and in default of payment not more than three months' hard labour. But by the Turnpike Act, 3 G. 4, c. 126, s. 123, for a similar offence no penalty is imposed, the punishment being not more than three months' imprisonment, there to remain without bail or mainprize, by one justice.

By the late Act, 6 & 7 Vict. c. 30, dated July 12th, 1843, intituled "An Act to amend the Law relating to Pound-breach and Rescue in certain cases," it is recited, s. 1, that it frequently happens that cattle which are lawfully impounded, or which are lawfully seized for the purpose of being impounded, are rescued from the pound or place in which they are so impounded, or on the way to or from such pound or place, and that it is expedient for remedy thereof for two of Her Majesty's justices of the peace to try such offenders in a summary way, and award such redress as hereinafter mentioned to the persons on whose behalf the cattle so rescued shall have been distrained: and enacted, that in case any person or persons shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle which shall be lawfully seized for the purpose of being impounded, in consequence of having been found wandering, straying, or lying, or being depastured on any inclosed land, without the consent of the owner or occupier of such inclosed land, from the pound or place where the same shall be so impounded, or on the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place or any part thereof, or any lock or bolt belonging thereto, or with which the same shall be fastened, every person so offending shall, upon conviction thereof before two of Her Majesty's justices of the peace, forfeit and pay any sum not exceeding 5*l.*, together with reasonable charges and expenses, or in default

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(c) See 5 & 6 W. 4, c. 50, s. 75.



thereof, be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour, for any time not exceeding three calendar months, nor less than fourteen days, unless such sum of money and costs as aforesaid shall be sooner paid, and it shall be lawful for the said justices to award the whole or any portion of such penalty to the person or persons in whose behalf such cattle were distrained.

Persons committing any offence against the provisions of this Act, by s. 4, may be summoned to appear before such justices, or a warrant may be issued in the first instance.

It may be well to observe here that this Act does not apply to bulls, bullocks, or cows.

According to the rule of *ejusdem generis*, the words "any horse, ass, sheep, swine, or other beast or cattle," mean only any horse, ass, sheep, or swine, and no other animal whatever. In a case under Martin's Act, 3 G. 4, c. 71, Bailey, J., there stated, other cattle did not include a bull, as also did Mr. Justice Littledale (*d*).

If a distress be driven without a cause, a stranger cannot rescue them from being driven to the pound, although the owner may have rescue before they are impounded. However, when once the beasts are impounded, the owner himself cannot rescue them, unless he finds the pound unlocked, for the law presumes the naked possession to be a title against any person except the owner; but the latter, having a paramount title, may take the beasts at any time, though he cannot break the pound which the law hath ordained (*e*).

The owner of cattle impounded under the Highways and Turnpike Acts, in addition to the penalty imposed by such Acts, are also liable to pay the sum of fourpence as the pounder's fee for one whole distress; that is, should five head of cattle be impounded under the Turnpike Act, the property of one person, the fees and penalty would be 10s. 4*d.*, but should the five head of cattle belong to five different persons the fees and penalty would be 11s. 8*d.* (*f*).

Penalty for taking more than 5*l.*, to be recovered by action only.

By the statute 5 & 6 W. 4, c. 50, s. 75, if any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle or carriage of any description, or any truck or sledge, upon any such footpath or causeway; or shall tether any horse, ass, mule, swine, or cattle on any highway so as to suffer or permit the tethered animal to be thereon; or shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof; or shall wilfully obstruct the passage of any footway; or wilfully destroy or injure the surface of any highway; or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the surveyor, as herein directed; or dig or cut the banks, which are the securities and defence of the said highways; or break,

(*d*) *Ex parte Hill*, 3 C. & P. 225. See J. P. No. 37, vol. vii. p. 541.

(*e*) Co. Lit. 47; *Cotsworth v. Beti-*

*son*, 1 Ld. Raym. 105; Arch. Landlord and Tenant, 148.

(*f*) 1 & 2 Ph. & M., c. 12, s. 3.



damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same; or pull down, destroy, obliterate or deface any milestone or post, graduated or direction post or stone erected upon any highway; or shall play at football or any other game on any part of the said highways to the annoyance of any passenger or passengers; or if any hawker, higgler, gipsy, or other person travelling shall pitch any tent, booth, stall, or stand, or encamp upon any part of any highway; or if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw away any squib, rocket, serpent, or other firework whatsoever, within fifty feet of the centre of such carriage-way or cart-way (the distance from the centre of a turnpike road is 80 feet: see 3 G. 4, c. 126, s. 121); or bait or run for the purpose of baiting any bull upon or near any highway; or shall lay any timber stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter, or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon; or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, or erection, lands or premises adjacent thereto: or shall in any way wilfully obstruct the free passage of any such highway; every person so offending in any of the cases aforesaid, shall for each and every such offence forfeit and pay any sum not exceeding 40s. over and above the damages occasioned thereby.

By statute 3 G. 4, c. 126, s. 131, and 4 G. 4, c. 95, s. 15, the owner of every waggon, wain, or cart, or other such carriage, shall paint or cause to be painted, before the same shall be used on any turnpike road, his, her, or their Christian and surname and place of abode at full length, in large legible letters, not less than one inch in height, upon some conspicuous part of the right or off side of such waggons, &c.; penalty for every such offence not exceeding 5*l.*, if the driver be the owner; if not the owner, 40s. And by the statute 5 & 6 W. 4, c. 50, s. 76, as to provisions respecting highways, for the same offence the penalty is any sum not exceeding 40s. And under either of these statutes, for using a waggon, &c., without the owner's name painted thereon, as already prescribed, although the owner be not present, and may not even know of the *user* of the waggon, &c., he is nevertheless liable for the act of his servant (*g*).

*Drivers, &c.*] Two carts, beyond ten miles of London and Westminster, may be under the charge of one driver, if not drawn by more than one horse each, and the head of the horse of the hindmost cart being attached by a rein to the back of the foremost cart; if not so attached, penalty on the driver, 20s. (*h*).

Carts, &c., driven by persons under thirteen years of age, penalty on the owners not exceeding 10s. (*i*).

The driver of any cart, &c., riding thereon on any turnpike road,

(*g*) Stone's P. P. S. 41.

(*h*) See 3 G. 4, c. 126, s. 130.

(*i*) See 3 G. 4, c. 126, s. 131.



not having some one on foot or horseback to guide the same (except light carts drawn by two horses only, usually driven with reins, and by some person holding the reins): or by negligence or wilful misbehaviour hurting or damaging any person or carriage passing along; or quitting the road, or being at such distance or in such situation as not to be able to direct or manage the horses, or not keeping the left side of the road, or interrupting the free passage of any person or carriage on the road; on conviction before a justice of the peace of the limit where the offence is committed or the offender is apprehended, penalty on the driver not exceeding 40s. if the driver is not the owner; if he is the owner, not exceeding 5*l.* (*k*). And under the Highway Act, 5 & 6 W. 4, c. 50, s. 78, the penalty for the last-named offence, on conviction before any two justices of the peace, shall, in addition to any civil action to which he may make himself liable, for every such offence forfeit any sum not exceeding 5*l.*, in case such driver shall not be the owner of such waggon, cart, or other carriage; and in case the offender be the owner of such carriage, &c., then any sum not exceeding 10*l.*

Any unknown person committing any offence against this Act may be seized and detained by the trustees, or any of their officers, who shall see such offence committed, with or without any warrant, and shall be conveyed before any justice of the peace, to be dealt with according to law (*l*).

And it is further enacted, that if any person or persons, having the care of any waggon, wain, cart, or other such carriage, conveying goods for hire or reward, or for sale, on any turnpike road, shall not chain or fasten any dog, that may be attending him or them on such road, to such waggon, wain, cart, or carriage, every person so offending, shall forfeit and pay any sum not exceeding 20s. (*m*).

It is not necessary that an information should be exhibited or taken by or before such justices: and all such proceedings by summons without information shall be as good, valid, and effectual, to all intents and purposes, as if an information in writing was exhibited; provided such summons be issued for the recovery of any penalty or forfeiture, by that or any other Act or Acts, for making or maintaining any turnpike road imposed, is made recoverable by information (*n*).

*Nuisance to roads, footpaths, bridges, &c.*] By 3 G. 4, c. 126, s. 121, "If any person or persons shall ride upon any footpath or causeway, by the side of any turnpike road made or set apart for the use or accommodation of foot passengers, or shall lead or drive any horse, ass, mule, swine, or cattle, or carriage of any description, or any wheelbarrow, truck, or sledge, or any single wheel of any waggon, cart, or carriage, apart therefrom, upon any such footpath or causeway;

"Or shall cause any injury or damage to be done to the same, or the hedges, posts, rails, or fences thereof;

(*k*) 3 G. 4, c. 126, s. 132.

(*l*) *Id.* s. 140.

(*m*) See 4 G. 4, c. 95, s. 76.

(*n*) *Id.* s. 83.



“Or shall wilfully pull down or damage any bridge, wall, or any other building or erection made by the trustees or commissioners of any turnpike road, or repairable by them; or shall haul or draw, or cause to be hauled or drawn upon any part of such turnpike road, any timber, stone, or other thing, otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other thing, which shall be carried principally or in part upon wheeled carriages, to drag or trail upon such road to the prejudice thereof;

“Or shall use any tip-stick, joggle, or other instrument, for the purpose of retarding the descent of any cart or other carriage, down any hill, in such manner as to destroy, injure, or disturb the surface of any turnpike road;

“Or shall in or upon such road, or by the side or sides thereof, or in any exposed situation near thereto, kill, slaughter, singe, scald, burn, dress, or cut up any beast, swine, calf, lamb, or other cattle;

“Or if any person, driving any horse or other beast on the said road, carrying any iron bar or rod, basket, or pannier, or any other matter or thing, shall place such bar or rod, basket or pannier, matter or thing, so that the same or any of them shall project more than thirty inches from the side of such horse or other beast, or so as in any manner to obstruct or impede the passage of any person, or any horse, beast, or carriage, travelling along such turnpike road;

“Or if any hawker, higgler, gipsy, or other person or persons, travelling with any machine, vehicle, cart, or other carriage, with or without any horse, mule, or ass, shall pitch any tent, booth, stall, or stand, or encamp upon or by the sides of any part of any turnpike road;

“Or if any blacksmith, or other person, occupying a blacksmith's shop, situate near any turnpike road, and having a window or windows fronting the said road, shall not, by good and close shutters, every evening, after it becomes twilight, bar and prevent the light from such shop shining into or upon the said road;

“Or if any person or persons shall make or assist in making any fire or fires, commonly called bonfires, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever within eighty feet of the centre of such road:

“Or bait, or run for the purpose of baiting, any bull, or play at football, tennis, fives, cricket, or any other game or games upon such road, or on the side or sides thereof, or in any exposed situation near thereto, or to the annoyance of any passenger or passengers;

“Or if any person shall leave any waggon, wain, cart, or other carriage whatever upon such road, or on the side or sides thereof, without any proper person in the sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same, or shall not place such waggon, wain, or other carriage, during the time of loading or unloading the same, or of taking refreshment, as near to one side of the road as conveniently as may be, either with or without any horse or beast of draught harnessed or yoked thereto;

“Or shall lay any timber, stone, hay, straw, dung, manure, soil,



ashes, rubbish, or other matter or thing whatsoever upon such road, or on the side or sides thereof, or the footpaths or causeways adjoining, to the prejudice of such road or footways, or to the prejudice, annoyance, interruption, or personal danger of any person or persons travelling thereon ;

“ Or shall suffer any water, filth, dirt, or other offensive matter, or thing whatsoever, to run or flow into or upon such road or footpaths, from any house, building, erection, lands, or premises adjacent thereto ;

“ Or if any person driving any pigs or swine upon such road, shall suffer such pigs or swine to root up or damage such road, or the fences, hedges, banks, or copse on either side thereof respectively ;

“ Or if any person shall, after having blocked or stopped any cart, waggon, or any carriage in going up a hill or rising ground, cause or suffer to be or remain on such road, the stone or other thing with which such cart or other carriage shall have been blocked or stopped ;

“ Or if any person or persons shall pull down, damage, injure, or destroy any lamp or lamp-post put up, erected, or placed in or near the side of any turnpike road or toll-house erected thereon, or shall extinguish the light of any such lamp ;

“ Every person offending in any of the cases aforesaid, shall, for each and every such offence, forfeit and pay any sum not exceeding 40s. over and above the damages occasioned thereby.”

Section 83 of 4 G. 4, c. 95, provides for the recovery of penalties imposed by the 3 G. 4, c. 126 ; and by section 141 of the latter statute, the person convicted may be kept in custody by a verbal order of the justice until a distress warrant be issued, and should such warrant be returned “ *nulla bona*,” such offender may be committed to the common gaol or house of correction for three calendar months, unless such penalty and costs be sooner paid.

By statute 4 G. 4, c. 95, s. 72, “ If any person or persons whomsoever shall wilfully pull down, break, injure or damage any table of tolls put up or fixed at any toll gate or bar on any part of any turnpike road, or wilfully or designedly deface or obliterate any of the inscriptions, letters, figures, or marks thereon ;

“ Or if any person or persons shall wilfully pull up, throw down, break, injure, or damage any posts, rails, or fences, placed or to be placed or put up by order of any trustees or commissioners of any turnpike road, or their surveyor or surveyors, either by the side or sides of such road, at or near to any pit or quarry which shall be used, opened, or made for the getting of stones, gravel, or other materials for the purposes thereof, in order to prevent accidents ;

“ Or if any person or persons shall wilfully cause any damage or injury to be done to any bridge, arch, wall, or other building or erection to be set up or erected by virtue of an Act or any part of any turnpike road, or by the side or sides thereof ;

“ Or if any person or persons shall cast or throw any earth or rubbish, or other matter or thing, into any drain, ditch, culvert, tunnel, or other watercourse, made by virtue of any Act, so as to obstruct the water from running or draining off any turnpike road ;

“ Or if any person or persons shall, without being thereto authorized by the surveyor or surveyors for the time being acting under



any Act, shovel up, scrape, gather, or carry away any stones, gravel, sand, or other materials, slutch, dirt, mire, or soil from off any foot-path or causeway, or any other part of such road;

“ Or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his, her, or their care, upon any such road ;

“ Or if any such person shall dig, make, or use any pit or pits for sawing of timber or wood within thirty feet of the centre of any such turnpike road, unless where inclosed by a fence from any such road ;

“ Every person offending in any of the cases aforesaid shall forfeit and pay a sum not exceeding 40s. for every such offence ; and one moiety of such penalties shall be paid to the informer, and the other moiety thereof shall be paid to the treasurer of the trustees or commissioners of such turnpike road, and applied towards the repair of such road.”

By section 102 of 5 & 6 Will. 4, c. 50, “ If any person, after having been paid or tendered a reasonable sum of money for his costs, charges and expenses, shall be summoned as a witness to give evidence before any justices of the peace touching any matter or fact contained in any information or complaint for any offence against this Act, either on the part of the prosecutor or the person accused, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses) refuse to be examined upon oath and give evidence before such justice of the peace, then in either of such cases such person shall forfeit for every such offence any sum not exceeding 5*l*. For a similar offence under statute 3 G. 4, c. 126, s. 138, the Turnpike Act, the penalty is forty shillings.

Not to lay rubbish, or any other matter or thing, within eighty feet of the centre of a turnpike road, 3 G. 4, c. 126, s. 114, nor within fifty feet of the centre of a highway, 5 & 6 Will. 4, c. 50, s. 72 ; for an offence against the former statute the offender to pay the costs of removing after due notice, and for an offence against the latter statute a penalty of not more than 40s. and costs, by distress and sale, or if not sufficient goods, not more than three months hard labour.

The freehold of the highway is in him that hath the freehold of the soil ; but the free passage is for all the Queen's liege people (*a*). Waste lands adjoining to public highways are presumed, in the first instance, to belong to the owner of the adjoining land, and not to the lord of the manor ; but that presumption prevails only so long as proof to the contrary is wanting (*b*),

By the 3 G. 4, c. 126, all former Turnpike Acts are repealed, and the law respecting turnpike roads is consolidated by that Act, and the subsequent Acts of 4 G. 4, c. 95 ; 7 & 8 G. 4, c. 24 ; and 9 G. 4, c. 77.

By section 143 of the 3 G. 4, c. 126, penalties not exceeding 20*l*.

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(*a*) 2 Inst. 705.

(*b*) *Steel v. Prickett*, 2 Stark. 463.



may be recovered before a single justice; which by section 141 are directed to be paid, half to the informer, and half to the treasurer to the trustees of the road, to be applied for the purposes of the road.

By section 142, the justice may mitigate any penalty, so as the reduction does not exceed two-thirds.

By section 145, and the 4 G. 4, c. 95, s. 87, an appeal lays to the sessions only where the penalty exceeds 40s., and declares that no proceeding under either of the Acts shall be quashed or vacated for want of form, or be removed by *certiorari*.

Under the Highway Act, 5 & 6 Will. 4, c. 50, the notice of appeal is to be given within fourteen days after the conviction, and if before two justices, notice must be served upon both the justices (c).

*Nuisance, how abated.*] The authority of a private individual to abate a nuisance in a public highway is conditional on the fact that the nuisance does him some special injury, and he can only interfere with such a nuisance so far as may be necessary to the exercise of his right of passing along the highway. A plea justifying damage to the property of a person who has improperly placed a nuisance on a highway, must show either that the abatement of the nuisance was absolutely necessary to enable the person doing the damage to pass, or that the person doing the damage could not, avoiding the nuisance, have passed along the highway with reasonable convenience. To a declaration complaining of an injury done to a wharf abutting on the river Thames by means of a certain vessel navigating the river, of which the defendant had the care and management, the defendant pleaded in substance that the wharf in the declaration mentioned was a woodwork erection below low watermark into the navigable river Thames, which was a certain public Queen's highway; that the wharf was a common nuisance, constructed and wilfully continued by the plaintiff after notice; that the defendant had the care and management of a certain vessel, and having such care had occasion to pass over the particular part of the bed and course of the river; that in so passing he directed and managed the vessel with all the skill and care that would have been due and proper had the said part of the bed and course of the river not been obstructed as aforesaid; and that he did no unnecessary damage:—*Held*, on motion for judgment, *non obstante veredicto*, bad for not showing that the defendant could not with reasonable convenience pass along without causing the damage complained of (d).

*Toll.*] By statute 3 G. 4, c. 126, s. 32, and be it further enacted, that no toll shall be demanded or taken by virtue of this or any other Act or Acts of parliament, on any turnpike road, for any horses, carts, or waggons, &c., employed only in carrying or conveying any vagrant sent by a legal pass, or any prisoner sent by any legal warrant, or returning empty after having been so employed.

Sheep going to pasture are exempt from toll by statute 1 & 2 W. 4, c. 25, s. 1, provided they do not travel more than two miles on

(c) *R. v. Bedfordshire Justices*, 3 Per. & D. 21; S.C. 11 Ad. & E. 139.

(d) *Dimes v. Petley*, 14 J.P. 653.



the turnpike road; and turnips were decided to be pasture by a full bench of magistrates, at the petty sessions held at Greta Bridge, on the 24th day of March, 1846.

Also by the appointment of county and district constables, under the 2 & 3 Vict. c. 93, no toll shall be demanded or taken, 3 & 4 Vict. c. 88, s. 1, for any horse, or police van, carriage or cart, passing along any road or bridge, in the service of the police. By the 4 G. 4, c. 95, s. 89, a scale of weights is allowed for winter and summer. Summer is reckoned from May 1st to October 31st, and winter from November 1st to April 30th.

Also any person riding or driving a hired horse through a toll-gate and not producing a ticket, but stating the horse to be his own, is liable to a penalty of ten pounds.

### 28. *Horse Slaughtering.*

See "Cruelty to Animals," *ante*, p. 270.

### 29. *Lodging Houses.*

*By stat. 14 & 15 Vict. c. 28.—An Act for the well ordering of common Lodging Houses, it is enacted:—*

Sect. 1. *Short title.*] In citing this Act for any purpose it shall be sufficient to use the expression "the Common Lodging Houses Act, 1851."

2. *Interpretation of terms in this Act.*] The following words and expressions in this Act have, for the purposes and execution of this Act, the following meanings; to wit,

The word "place" includes county, riding, hundred, and other division or part of a county, city, borough, parish, district, and other place whatsoever.

The word "borough," and the expressions "mayor, aldermen, and burgesses," and "borough fund," have respectively the same meaning as in the Act for the regulation of municipal corporations:

The expression "Improvement Act" means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes:

The expression "common lodging house" includes, in any case in which only a part of a house is used as a common lodging house, the part so used of such house:

3. *By whom the Act is to be executed.*] This Act shall be executed as follows; to wit,

1. Within and for all or any part of the metropolitan police district, by "the commissioners of police of the metropolis," or such one of them as is from time to time appointed in that behalf by one of Her Majesty's principal secretaries of state:

2. Within and for all and any part of any place not being within the metropolitan police district, but being now or hereafter the district of a local board of health, by the local board of health for the district:

3. Within and for all and any part of any other place not



being within the metropolitan police district, and not being the district of a local board of health, but being now or hereafter an incorporated borough regulated under the Act for the regulation of municipal corporations, or any Act for the amendment thereof, or any charter granted in pursuance of any such Act, by the mayor, aldermen, and burgesses of the borough acting by the council of the borough :

4. Within and for all and any part of any other place not being within the metropolitan police district, and not being the district of a local board of health, and not being such an incorporated borough, but being now or hereafter the place within the limits of an improvement Act, by the commissioners, trustees, or other body, by whatever name known for executing the improvement Act.

5. Within and for all and any part of any other place not being one of the places hereinbefore specified, by the justices of the peace acting in petty sessions for the place.

4. *As to expenses of executing this Act.*] The expenses of and incident to the executing of this Act shall be borne and paid as follows ; to wit,

1. With respect to the metropolitan police district, as part of the general expenses of executing the Acts for the time being in force relating to the metropolitan police force :

2. With respect to the district of a local board of health, as part of the expenses of executing the Acts for the time being in force relating to the local board of health, and as charged upon and payable out of the monies carried, under the Public Health Act, 1848, to the district fund account of the local board of health :

3. With respect to an incorporated borough, as part of the expenses of carrying into execution within the borough the provisions of the Act for the regulation of municipal corporations, and as charged upon and payable out of the borough fund of the borough :

4. With respect to a place within the limits of an improvement Act, as part of the general expenses of executing that Act, and as charged upon and payable out of the monies from time to time applicable for those expenses :

5. With respect to a place in which this Act is executed by justices in petty sessions, as part of the general expenses of the constablewick of the place, and as charged upon and payable out of the monies from time to time applicable for those expenses :

And the monies from time to time required for the payment of the expenses of and incident to the execution of this Act shall be assessed, levied, raised, recovered, and paid accordingly.

5. *Meaning of the term "the local authority."*] The expression in this Act "the local authority" means with respect to the purposes and execution of this Act with respect to any place, the body or person by this Act authorized to execute with respect to the place the several provisions of this Act.

6. *Notice of this Act to be given to the keepers of common lodging houses.*] Within three months after the passing of this Act the local authority shall, and from time to time thereafter the local authority may, give to the keeper of every common lodging-house



already or hereafter within the jurisdiction under this Act of the local authority, notice in writing of this Act, and shall give such notice by leaving the same for such keeper at the house, and shall by such notice require the keeper to register the house as by this Act provided, and such notice may be in the form in the Schedule to this Act annexed, or the like effect.

7. *Registers of common lodging houses to be kept.*] The local authority shall keep a register in which shall be entered the names and residences of the keepers of all common lodging houses within the jurisdiction of the local authority, and the situation of every such house, and the number of lodgers authorized according to this Act to be received therein.

8. *Lodgers not to be received in common lodging houses until registered under this Act.*] After one month after the giving of such notice to register as by this Act provided, the keeper of any common lodging house or any other person shall not receive any lodger in such house until the same has been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and has been registered as by this Act provided,

9. *Power to local authority to make regulations respecting common lodging houses.*] The local authority may from time to time make regulations respecting common lodging houses within its jurisdiction for all or any of the purposes respecting the same for which the local board of health are by the Public Health Act, 1848, authorized to make bye-laws, and for the well-ordering of such houses, and for the separation of the sexes therein: provided always that the regulations made under this Act by the local authority shall not be in force until they have been confirmed by one of Her Majesty's principal secretaries of state.

10. *Power to local authority to impose penalties for offences committed against regulations.*] The local authority shall have the same power of imposing penalties on offenders against the said regulations, subject to the same restrictions, as the local board with respect to offenders against such bye-laws, and such penalties shall be recoverable in the same way as is provided in the said Act with respect to the penalties imposed on offenders against such bye-laws; and a copy of the said regulations, purporting to be signed by the secretary of state, and also to be signed by the local authority (or to be sealed with the seal of the same, in case it have a seal), shall be receivable in evidence of such regulations, and of the duly making and confirming thereof.

11. *Keepers of common lodging houses to give notice of fever, &c. therein.*] The keeper of a common lodging house shall, when a person in such house is ill of fever or any infectious or contagious disease, give immediate notice thereof to the local authority, or some officer of the local authority, and also to the poor law medical officer and the poor law relieving officer of the union or parish in which the common lodging house stands.

12. *As to inspection of common lodging houses.*] The keeper of a common lodging house, and every other person having or acting in the care and management thereof, shall, at all times when required by



any officer of the local authority, give him free access to such house or any part thereof.

13. *As to cleansing of common lodging houses.*] The keeper of a common lodging house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, cess-pools, and drains thereof, to the satisfaction of and so often as shall be required by or in accordance with any regulation or bye-law of the local authority, and shall well and sufficiently, and to the like satisfaction, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year.

14. *Penalty for offences against this Act.*] If the keeper of a common lodging house, or any other person having or acting in the care or management thereof, offend against any of the provisions of this Act, or any of the bye-laws or regulations made in pursuance of this Act, or if any person in any common lodging house be confined to his bed for forty-eight hours by fever or any infectious or contagious disease, without the keeper of such house giving notice thereof as required by this Act, every person so offending shall for every such offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which the offence continues: provided always, that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

15. *Recovery of penalties.* The clauses and provisions of the Railways Clauses Consolidation Act, 1845, "with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices," are for the purposes and execution of this Act incorporated with this Act.

16. *General powers of local authority, &c.*] The local authority and all justices, constables, and others, shall respectively have full jurisdiction, powers, authorities, and indemnities for executing the several provisions of this Act; and the restrictions of the Public Health Act, 1848, as to the hours within which common lodging houses may be entered by persons authorized by a local board of health, shall not apply to this Act.

17. *Act not to extend to the city of London.*] That this Act shall not extend to the city of London or the liberties thereof.

18. *Nor to Scotland.*] That nothing in this Act shall extend to Scotland.

#### SCHEDULE.

##### *Form of Notice.*

TAKE notice, that on the — day of — an Act called "the Common Lodging Houses Act, 1851," was passed, and that before the — day of — you, being the keeper of a common lodging house within [*here state the place over which the jurisdiction of the local authority giving the notice extends*], must have your common



lodging house registered, and that the register is to be kept at [*here state where the register is to be kept*], and that if you do not have your common lodging house so registered you will be liable to a penalty not exceeding five pounds for every lodger whom you receive in your common lodging house while it is not so registered; and that on your applying to [*here give the name and address of the person to keep the register*] he will register your common lodging house free of all charge to you. Dated —

*And by stat. 16 & 17 Vict. c. 41,—An Act for making further Provisions with respect to Common Lodging Houses :—*

*Short title.]* Sect. 1. This Act may be cited for any purpose as the Common Lodging Houses Act, 1853.

2. *Recited Act and this Act to be as one.]* The Common Lodging Houses Act, 1851, and this Act shall be construed and executed as if they were one Act.

3. *Lodging houses to be registered.]* After three months after the passing of this Act a person shall not keep a common lodging house or receive a lodger therein until the house have been inspected and approved for that purpose by some officer appointed on that behalf by the local authority, and have been registered as by the recited Act provided; and a person shall not keep a common lodging house unless his name as the keeper thereof be entered in the register kept under the recited Act: Provided always, that when the person so registered dies, his widow or any member of his family may keep the house as a common lodging house for not more than four weeks after his death without being registered as the keeper thereof.

4. *When registry refused.]* The local authority may refuse to register as the keeper of a common lodging house a person who does not produce to the local authority a certificate of character in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging house is situate for property of the yearly rateable value of six pounds or upwards.

5. *Evidence of register.]* A copy of an entry made in a register kept under the recited Act, certified by the person having the charge of the register to be a true copy, shall be received in all courts and before all justices and on all occasions whatsoever as evidence, and be sufficient proof of all things therein registered, without production of the register or of any document, act, or thing on which the entry is founded; and every person applying at a reasonable time shall be furnished gratis by the person having such charge with a certified copy of any such entry.

6. *Supply of water to lodging houses.]* Where it appears to the local authority that a common lodging house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may by notice in writing require the owner or keeper of the common lodging house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose; and if the notice be not complied with accordingly, the local authority may remove the common lodging house from the register until it be complied with.



7. *Removal of sick persons.*] When a person in a common lodging house is ill of fever or any infectious or contagious disease, the local authority may cause such person to be removed to an hospital or infirmary, with the consent of the authorities thereof, and on the certificate of the medical officer of the parish, place, or district that the disease is infectious or contagious, and that the patient may be safely removed, and may, so far as the local authority think requisite for preventing the spread of disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and may, if the local authority think fit, award to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof, and such compensation shall be paid to such owners by the proper officer of the parish or union in which the common lodging house is situate, out of the rates applicable to the relief of the poor of such parish, the amount of such compensation being first certified in writing upon a list of such articles.

8. *In what cases keepers to report.*] The keeper of a common lodging house in which beggars or vagrants are received to lodge, or other person having the care or management thereof, shall from time to time, if required by any order of the local authority served on such keeper or person, report to the local authority, or to such person or persons as the said local authority shall direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the persons so ordered to report, which schedules they shall fill up with the information required, and transmit to the local authority.

9. *Nuisances in or about lodging houses.*] The town council, trustees, commissioners, guardians, and other officers and boards specified in the first section of the Nuisances Removal and Diseases Prevention Act, 1848, shall, on the receipt of a certificate of any police constable or of any officer appointed for the inspection of common lodging houses by the local authority, stating the existence in or about any common lodging house of any of the causes of complaint specified in that section, take all such proceedings as by that section are required to be taken by the town council, trustees, commissioners, guardians, and other officers and boards specified therein on a notice signed by two inhabitant householders, and in like manner as nearly as may be as if such notice had been given; and the local authority shall have the like powers, and shall take all such proceedings, on receipt of any such certificate of the existence of any such cause of complaint, as the town council, trustees, commissioners, guardians, and other officers or boards have and are empowered and required to take under the provisions of that Act.

10. *Local authority in Oxford and Cambridge.*] Provided always, notwithstanding any provision contained in this Act, that within the city of Oxford, or the parts within the jurisdiction of the commissioners for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement, (which commissioners are hereinafter called the Oxford commissioners,) the several powers and duties assigned by this Act to any local authority shall,



in so far as they are consistent with the laws under which the said Oxford commissioners act, be exercised by the said Oxford commissioners; and within the borough of Cambridge, or the parts within the jurisdiction of the commissioners acting under an Act of the thirty-fourth year of the reign of King George the Third for amending and enlarging the powers of a former Act of the same reign, for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within that town, (which commissioners are hereinafter called the Cambridge commissioners,) the several powers and duties aforesaid shall, in so far as they are consistent with the laws under which the said Cambridge commissioners act, be exercised by the Cambridge commissioners.

11. *Offences against this Act.*] The fourteenth section of the recited Act extends to offences against any of the provisions of this Act, so as to render the offenders liable to the penalties therein expressed, and any person convicted of any offence against the recited Act, or either of them, may, in default of payment of the penalty imposed, be imprisoned for any term not exceeding three months in the manner provided by law in that behalf.

12. *Effect of a third conviction.*] Where a keeper of a common lodging house, or a person having or acting in the care or management of a common lodging house, is convicted of a third offence against the recited Act, and this Act, or either of them, the justices before whom the conviction for such third offence takes place may, if they think fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the justices think fit, keep or have or act in the care or management of a common lodging house without the previous licence in writing of the local authority, which licence the local authority may withhold or may grant on such terms and conditions as they think fit.

13. *Acts may be executed by justices at petty session.*] In a case in which there are not petty sessions for a place fifthly mentioned in section three of the recited Act, that Act and this Act may be executed within and for all and any part of such places by the justices of the peace acting in petty sessions in the petty sessional division within which such place is comprised.

14. *Expenses of executing this Act.*] Where in any place the recited Act and this Act are executed by justices in petty sessions, the expenses of and incident to the executing of the recited Act and this Act with respect to such petty sessional division shall be borne by and paid out of the rates for the relief of the poor of the several parishes or other places comprised therein in which any common lodging house is situate (except so far as there are other monies applicable to the purpose), and the amount of such expenses shall be ascertained and apportioned by justices, and shall be paid accordingly as they order.



30. *Lunatics.*

By stat. 16 & 17 Vict. c. 97, every constable of any parish or place, and every relieving officer and overseer of any parish who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic, shall immediately apprehend and take or cause such person to be apprehended and taken before a justice; and it shall also be lawful for any justice, upon its being made to appear to him by the information upon oath of any person whomsoever that any person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, by an order under the hand and seal of such justice, to require any constable of the parish or place, or relieving officer or overseer of the parish where such person may be found, to apprehend him and bring him before such justice, or some other justice having jurisdiction where such person may be found; and every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person in such parish or place not a pauper and not wandering at large as aforesaid is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall, within three days after obtaining such knowledge, give information thereof upon oath to a justice, and in case it be made to appear to any justice, upon such information or upon the information upon oath of any person whomsoever, that any person within the limits of his jurisdiction not a pauper, and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, such justice shall either himself visit and examine such person and make inquiry into the matters so appearing upon such information, or by an order under his hand and seal direct and authorize some physician, surgeon, or apothecary to visit and examine such person, and make such inquiry, and to report in writing to such justice his opinion thereupon; and in case upon such personal visit, examination, and inquiry by such justice, or upon the report of such physician, surgeon, or apothecary, it appear to such justice that such person is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, it shall be lawful for such justice, by an order under his hand and seal, to require any constable of the parish or place, or any relieving officer or overseer of the parish where such person is alleged to be, to bring him before any two justices of the same county or borough; and the justice or justices (as the case may be) before whom any such person as aforesaid in the respective cases aforesaid is brought, under this enactment, shall call to his or their assistance a physician, surgeon, or apothecary, and shall examine such person, and make such inquiry relative to such person as he or they shall deem necessary; and if upon examination of such person or other proof such justice be satisfied that such person so brought before him is a lunatic, and was wandering at large, and is a proper



person to be taken charge of and detained under care and treatment, or such two justices be satisfied that such person just brought before them is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, and if such physician, surgeon, or apothecary sign a certificate with respect to every such person so brought either before one justice or two justices according to the form in the schedule (F), No. 3, to this Act, it shall be lawful for the said justice or justices, by an order under his and their hand and seal, or hands and seals, according to the form in the Schedule (F.), No. 1. to this Act, to direct such person to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some hospital registered or house licensed for the reception of lunatics, and the said constable, relieving officer, or overseer who may have brought such person before the said justice or justices, or any constable whom such justice or justices may require so to do, shall forthwith convey such person to such asylum, hospital, or house accordingly: provided always, that it shall be lawful for any justice, upon such information on oath as aforesaid, or upon his own knowledge, and alone, in the case of any such person as aforesaid wandering at large and deemed to be a lunatic, or with some other justice, in any other of the cases aforesaid, to examine the person deemed to be a lunatic, at his own abode or elsewhere, and to proceed in all respects as if such person were brought before him or them as hereinbefore mentioned; provided also, that it shall be lawful for the said justice or justices to suspend the execution of any such order for removing any such person as aforesaid to any asylum, hospital, or house for such period not exceeding fourteen days as he or they may deem meet, and in the meantime to give such directions or make such arrangements for the proper care and control of such person as he or they shall consider necessary; provided also, that if the physician, surgeon, or apothecary by whom such person is examined certify in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other physician, surgeon, or apothecary certify in writing that such person is fit to be removed; and every such physician, surgeon, and apothecary is hereby required to give such last-mentioned certificate as soon as in his judgment it ought to be given; provided also, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from retaining or taking such lunatic under his own care, if such relation or friend shall satisfy the justice or justices before whom such lunatic shall be brought, or the visitors of the asylum in which such lunatic is or is intended to be placed, that such lunatic will be properly taken care of.

If the constable fail in his duty in this respect, he is liable to a penalty not exceeding 10*l.*, by sect. 70.

### 31. *Malicious Injuries.*

The statute 7 & 8 G. 4, c. 30, passed to suppress malicious injuries to property, gives a similar power to that of 7 & 8 G. 4, c. 29, of



arrest to peace officers (sec. 28), and enumerates the following offences:—Mr. Chitty very justly makes the following observation: “But it must be borne in mind, that a malicious intention is an essential ingredient in the offence.”—Setting fire to a church, chapel, house, or other building; destroying silk, woollen, cotton, or linen goods in the loom, or the machinery for manufacturing them, or machines for manufacturing other goods, or thrashing machines; firing coal mines; draining or filling-in mines, shafts, &c., with intent to destroy them, destroying engines, erections, &c., belonging to mines; firing, destroying, or damaging any ship; exhibiting false lights to destroy a ship; destroying or damaging any sea bank, or works on a river or canal; destroying or injuring a public bridge; destroying or injuring a turnpike-gate or toll-house; breaking down the dam of a mill, fishery, &c.; killing or maiming cattle; firing a stack of corn, grain, straw, hay, &c., or a crop, plantation or heath; destroying the hop-binds; destroying or damaging trees, shrubs, &c.; destroying, &c., fruit, or cultivated vegetables; destroying fences, walls, stiles, gates, &c.; or committing any other malicious injury to property, or aiding and abetting in any of these offences.

Where a man was indicted under this Act, for maliciously injuring trees growing in a hedge, and doing damage exceeding five pounds, and it was proved that the damage to the trees did not exceed one pound, but to repair the damage done it was necessary to stub up the old hedge, and to plant and protect a new one, which would cost more than four pounds: the court held that there was no pretence for saying that the damage done to the trees amounted to five pounds (a)

As has been already noticed, injury to a dog is cognizable under the 7 & 8 G. 4, c. 30, s. 24; but that injury to cats comes within the same statute may be much questioned, as it is difficult to assign a value. They are of no value in law, being of a base nature, and *feræ naturæ*. But if after due notice to the owner of the cat committing damage, the act be repeated, the owner of the cat may be proceeded against under the 7 & 8 G. 4, c. 30, s. 24, for the amount of injury done, the owner being liable for consequential damage at warning.

If A. wilfully trespass upon the lands of B. by walking thereon, and without B.'s consent, and no actual damage be committed, A. may be forcibly put out of the land by B. or by any other person employed or under the directions of B., and if he assault B., or such other person acting under B.'s directions, he may be summarily proceeded against for the assault.

In an action of trespass, the jury may presume a damage, though none be proved, but it is not so under the Trespass Act, 7 & 8 G. 4, c. 30, s. 24; there must be a pecuniary damage proved, though proof of damage to the amount of one farthing would suffice: it was so decided in *Butler v. Turley*, 2 C. & P. 585.

On the conviction of several parties under 7 & 8 G. 4, c. 30, s. 24, a separate penalty must be assessed upon each, and that, *to the full*

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(a) *R. v. Whiteman*, 23 Law, J. 120, m.



amount of damages done, and costs may be assessed on *each*, but one only of the amounts forfeited by the offenders can be awarded to the prosecutor, the others to be applied in aid of the county rate; see s. 32 of the same statute.

A steam engine used in draining and working a mine had been stopped and locked up for the night. The prisoner got inside the engine-house and set it going, and there being no machinery attached, the engine went with great velocity, and received damage. Held, that this was the damaging of the engine within the statute 7 & 8 G 4, c. 30, s. 7 (b).

Under the Malicious Trespass Act, 7 & 8 G. 4, c. 30, s. 44, one month's notice of action shall be given to all persons against whom actions may be brought for anything done in the pursuance of the Act: held, that to entitle a defendant to notice of action, it was not enough that he had acted *bonâ fide*, but that he must have had reasonable cause for thinking that the defendant was "found committing" an offence under the Act (c).

The very language of the 32nd section of the 7 & 8 G. 4, c. 30, implies, that some other person than the owner may lay the information, which recites—"where the party aggrieved is unknown," &c. If the owner were bound to lay the information, he must do so upon oath (d). And as he cannot in many cases do so, no information could be laid at all, as we may assume the Act to give no other person power to do so; and if he is not bound to lay it, neither can it be necessary to lay it as at his instance, for what the law does not bind him to do directly and always, it cannot in such a case require him to do so indirectly, and sometimes only. And if the information may be laid by a stranger in one case, it may in all (e).

Troughs used for conveying water to a convenient place for washing ore-bearing earth gained from a mine and separating the earth from the ore, are "erections used in conducting the business of a mine," within the meaning of the 7 & 8 Geo. 4, c. 30, s. 8; the business of a mine being to bring the ore gotten from it into a marketable state as ore (f).

### 32. Nuisance.

See "Highways, Turnpikes."

### 33. Obscene books, prints, &c.

*By stat. 20 & 21 Vict. c. 83,—An Act for more effectually preventing the sale of Obscene Books, Pictures, Prints, and other Articles.*

25th August, 1857.

Whereas it is expedient to give additional powers for the suppression of the trade in obscene books, prints, drawings, and other obscene articles: Be it enacted by the Queen's most excellent

(b) *Reg. v. Morris*, 9 C. & P. 241.

(c) *Cann v. Clipperton*, 8 L. J. Rep. N. S., Q. B. 268; 10 Ad. & E. 582; 2 P. & D. 560.

(d) See section 30.

(e) See J. P. No. 23, vol. x. 366.

(f) *Barnwell v. Inhabitants of Winterstoke*, 14 J. P. 114.



Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Search of suspected premises.*] It shall be lawful for any metropolitan police magistrate or other stipendiary magistrate, or for any two justices of the peace, upon complaint made before him or them upon oath that the complainant has reason to believe, and does believe, that any obscene books, papers, writings, prints, pictures, drawings, or other representations are kept in any house, shop, room, or other place within the limits of the jurisdiction of any such magistrate or justices, for the purposes of gain, lending on hire, or being otherwise published for purposes of gain, which complainant shall also state upon oath that one or more articles of the like character have been sold, distributed, exhibited, lent, or otherwise published as aforesaid, at or in connexion with such place, so as to satisfy such magistrate or justices that the belief of the said complainant is well founded, and upon such magistrate or justices being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such a character and description that the publication of them would be a misdemeanor, and proper to be prosecuted as such, to give authority by special warrant to any constable or police officer, into such house, shop, room, or other place, with such assistance as may be necessary, to enter in the daytime, and if necessary, to use force, by breaking open doors or otherwise, and to search for and seize all such books, papers, writings, prints, pictures, drawings, or other representations as aforesaid found in such house, shop, room, or other place, and to carry all the articles so seized before the magistrate or justices issuing the said warrant, or some other magistrate or justices exercising the same jurisdiction; and such magistrate or justices shall thereupon issue a summons calling upon the occupier of the house or other place which may have been so entered by virtue of the said warrant to appear within seven days before such police stipendiary magistrate or any two justices in petty sessions for the district, to show cause why the articles so seized should not be destroyed; and if such occupier or some other person claiming to be the owner of the said articles shall not appear within the time aforesaid, or shall appear, and such magistrate or justices shall be satisfied that such articles or any of them are of the character stated in the warrant, and that such or any of them have been kept for any of the purposes aforesaid, it shall be lawful for the said magistrate or justices, and he or they are hereby required, to order the articles so seized, except such of them as he or they may consider necessary to be preserved as evidence in some further proceeding, to be destroyed at the expiration of the time hereinafter allowed for lodging an appeal, unless notice of appeal as hereinafter mentioned be given, and such articles shall be in the meantime impounded; and if such magistrate or justices shall be satisfied that the articles seized are not of the character stated in the warrant, or have not been kept for any of the purposes aforesaid, he or they shall forthwith direct them to be restored to the occupier of the house or other place in which they were seized.



2. *If actions brought, tender of amends, &c.*] No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this Act, or in, under, or by virtue of any authority hereby given, if tender of sufficient amends shall have been made by or on behalf of the party who shall have committed such irregularity, trespass, or other wrongful proceeding, before such action brought; and in case no tender shall have been made it shall be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall think fit, whereupon such proceeding, order, and adjudication shall be had and made in and by such court as in other actions where defendants are allowed to pay money into court.

3. *Limitation of actions.*] No action, suit or information, or any other proceeding, of what nature soever, shall be brought against any person for anything done or omitted to be done in pursuance of this Act, or in the execution of the authorities under this Act, unless notice in writing shall be given by the party intending to prosecute such action, suit, information, or other proceeding, to the intended defendant, one calendar month at least before prosecuting the same, nor unless such action, suit, information, or other proceeding shall be brought or commenced within three calendar months next after the Act or omission complained of, or in case there shall be a continuation of damage, then within three calendar months next after the doing such damage shall have ceased.

4. *Appeal.*] Any person aggrieved by any act or determination of such magistrate or justices in or concerning the execution of this Act, may appeal to the next general or quarter sessions for the county, riding, division, city, borough, or place in and for which such magistrate or justices shall have so acted, giving to the magistrate or justices of the peace whose act or determination shall be appealed against notice in writing of such appeal, and of the grounds thereof, within seven days after such act or determination and before the next general or quarter sessions, and entering within such seven days into a recognizance, with sufficient surety, before a justice of the peace for the county, city, borough, or place in which such act or determination shall have taken place, personally to appear and prosecute such appeal, and to abide the order of and pay such costs as shall be awarded by such court of quarter sessions or any adjournment thereof, and the court at such general or quarter sessions shall hear and determine the matter of such appeal, and shall make such order therein as shall to the said court seem meet; and such court, upon hearing and finally determining such appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and if such appeal be dismissed or decided against the appellant or be not prosecuted, such court may order the articles seized forthwith to be destroyed: provided always, that it shall not be lawful for the appellant on the hearing of any such appeal to go into or give evidence of any other grounds of appeal against any such order, act, or determination than those set forth in such notice of appeal.



*34. Plate Robberies.*

These are generally committed by discarded servants, or they give the information to the adepts, and share in the spoil; this is called putting up. The thieves never take the putter up with them, nor do they allow him to know when they intend to crack the house. The only information required is the localities or the house, the habits of the occupier, the best way to enter, and, above all, where the most valuable property is deposited; these facts being ascertained, nothing is wanted but a favourable opportunity to put the project into execution: a stormy night with a high wind is very convenient.

Some people in the country lock the door at night, and leave the key in the lock inside, which can easily be turned by a wire straight with the key-hole; the thieves then push and lower it down to the floor of the house, and by applying it to the lock, by the same wire draw it out from under the door, and walk deliberately into the house and plunder it of such booty as they think proper. Another plan is sometimes adopted, by sending a vagrant to beg, having with him a piece of soap or clay, prepared for the purpose, and during the absence of the servant to obtain a cast of the key, which is generally either in the lock or hung behind the door. One notorious thief told me he had had the key actually conveyed away from the premises, taken a cast of it, and returned it by another vagrant, not to the same place, but somewhere near it; so that had it been missed in the interval, it would appear to have been only mislaid.

Another, and rather a new plan, is practised now in large towns, by boring window shutters, &c. The burglars are prepared with paper of the same colour as the shutters, and are also ready prepared with some gummy matter, so that it will readily cleave to the wood, and should the night-watch pass, without a very minute investigation, nothing could be discovered until morning.

*35. Principals and Accessories.*

Persons committing crimes may be guilty, either as principals, or as accessories before the fact, or as accessories only after the fact committed.

A principal in the first degree is the actual perpetrator of the crime. Actual presence is not necessary; a constructive presence in some cases is sufficient, as where one commits a robbery or murder, and another keeps watch or guard at a convenient distance (*a*). Also in other cases, a party may be liable as principal, and be absent, as he that puts poison into anything to poison another and leaves it (*b*).

A principal in the second degree is he who is present aiding and assisting with a felonious intention to commit the felony (*c*).

As in the case of stealing in a shop, if several are acting in concert,

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(*a*) 1 East, P. C. 118; 1 Hawk. c. 31,  
s. 7.

(*b*) Hale's Sum. 216,  
(*c*) 4 Bla. Com. 34.



some in the shop and some out, and the property is stolen by one of those in the shop, those who are on the outside are equally guilty as principals in the offence of stealing in the shop (*d*).

The offender must also be aiding, assisting and abetting, to constitute him a principal in the second degree: mere presence is not enough.

Thus, if A. and B. be fighting, and C. comes up and looks on, but assists neither, C. is not guilty of homicide in any degree, though he may be fined for a misprision, if he neglects to exert himself to apprehend the offenders (*e*).

An accessory is he who is not the chief actor in the offence, nor present at its performance, but in some way concerned therein, either before or after the fact committed (*f*).

There may be an accessory to an accessory before the fact; as, if A. advise and procure B. to murder C., by this A. is accessory before the fact: and though but accessory, yet if D. receives and conceals him from justice, D. hereby becomes an accessory; but there cannot be an accessory to a person who was accessory after the fact (*g*).

An accessory before the fact is, he that being absent at the time of the felony committed, yet doth procure, counsel, command, or abet another to commit a felony (*h*).

If a person advise a woman to kill her child as soon as it shall be born, and she act on that advice, he is an accessory to the murder, though at the time of the advice, the child not being born, no murder could be committed of it; for the influence of the felonious advice continuing till the child was born, makes the adviser as much a felon as if he had given his advice after the birth (*i*).

An accessory after the fact, is where a person knowing the felony to have been committed by another, relieves, comforts, or assists the felon (*k*).

Generally, any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is sufficient to bring a man within this description, and make him accessory to the felony; as where one assists him with a horse to ride away with, or with money or victuals to support him in his escape (*l*).

In high treason there are no accessories, but all are principals; so also, in petty larceny, and every crime under the degree of felony.

If A. is charged with the offence, and B. is charged with aiding and abetting him, it is essential to make out the charge as to B., that B. should have been aware of A.'s intention to commit murder, to make him guilty of being principal in the second degree (*m*).

Where A. knowing that goods have been stolen, directs B. his servant to receive them into his premises, and B. in pursuance of that direction afterwards receives them in A.'s absence, B. knowing them to be stolen, they may be indicted jointly for receiving them (*n*).

(*d*) *Rex v. Gagerley*, Russ. & R. C. C. 343.

(*e*) Hale's Sum. 216.

(*f*) 4 Bla. Com. 34.

(*g*) 2 Hawk. c. 29. s. 1.

(*h*) 1 Hale, 615.

(*i*) 2 Hawk. c. 29. s. 18.

(*k*) 1 Hale, 618; 4 Bla. Com. 37.

(*l*) 2 Hawk. c. 29. s. 26.

(*m*) *Reg. v. Cruise*, 8 C. & P. 541.

(*n*) *Reg. v. Parr*, 2 M. & Rob. 346.



*By stat. 11 & 12 Vict. c. 46,—An Act for the Removal of Defects in the Administration of Criminal Justice,—it is enacted:—*

Sect. 1. *Accessaries before the fact to any felony may be punished in the same degree as the principal.]* That the technical strictness of criminal proceedings might in some instances be further relaxed, so as to insure the punishment of the guilty, without depriving the accused of any just means of defence: and that it is expedient to make further provision for the more effectual prosecution of accessaries before and after the fact to felony: and that it is also expedient that any accessory before the fact to felony should be liable to be indicted, tried, convicted, and punished in all respects like the principal, as is now the case in treason and in all misdemeanors: and enacts that from and after the passing of this Act, if any person shall become an accessory before the fact to any felony, whether the same be felony at common law or by virtue of any statute or statutes made or to be made, such person may be indicted, tried, convicted, and punished in all respects as if he were a principal felon.

2. *Trial and conviction of accessaries after the fact.]* That an accessory after the fact to felony can at present be tried only along with the principal felon, or after the principal felon has been convicted, and not otherwise, which is sometimes productive of a failure of justice; and enacts, that from and after the passing of this Act, if any person shall become an accessory after the fact of any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, he may be indicted and convicted either as an accessory after the fact to the principal felony together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony if convicted as an accessory may be punished, and the offence of such person, however indicted, may be inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felon in the same manner as if the act, by reason of which such person shall have become an accessory, had been committed at the same place as the principal felony: provided always, that no person who shall be once duly tried for any such offence, whether as an accessory after the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

3. *As to addition of counts in indictments for stealing and receiving stolen property.]* That according to the present practice of courts of criminal jurisdiction, it is not permitted in an indictment for stealing property to add a count for receiving the same property knowing it to have been stolen, or in an indictment for receiving stolen property, knowing it to have been stolen, to add a count for stealing the same property, and justice is hereby often defeated; and enacts, that from and after the passing of this Act, in every indictment for feloniously stealing property it shall be lawful to add a count for feloniously receiving the same property, knowing it to have been stolen,



and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property; and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property or of receiving it knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same, to find all or any of the said persons guilty either of stealing the property or of receiving it knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen.

4. *Courts of oyer and terminer may cause indictment to be amended in certain cases.*] That a failure of justices frequently takes place in criminal trials by reason of variances between writings produced in evidence and the recital or setting forth thereof in the indictment or information, and the same cannot now be amended at the trial, except in cases of misdemeanor; and for remedy thereof enacts, that it shall and may be lawful for any court of oyer and terminer and general gaol delivery, if such court shall see fit so to do, to cause the indictment or information for any offence whatever, when any variance or variances shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in the indictment or information whereon the trial is pending, to be forthwith amended in such particular or particulars by some officer of the court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance or variances had appeared.

5. *Not to extend to Scotland.*] That nothing in this Act contained shall extend to Scotland.

### 36. *Prize Fight.*

All persons present at a prize fight, having gone thither for the purpose of seeing the prize-fighters strike each other, are principals in the breach of the peace (o).

### 37. *Receivers of Stolen Goods.*

Receivers of stolen goods, or fences as they are called, are worse than thieves. It is an old and true saying, "If there were no receivers there would be no thieves;" to a certain extent this is true. To be convicted of receiving, however, the party must have got the goods into his possession or custody; and where the thief and receiver were apprehended whilst they were bargaining for the goods and before the receiver had possession of them, it was holden that the receiver could not be convicted (p). But where stolen goods were

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(o) *Rex v. Murphy*, 6 C. & P. 10;      (p) *R. v. Wiley*, 20 Law J. 4, m.  
*Rex v. Young*, 8 C. & P. 645.



found in the pocket of the thief by the owner, who thereupon sent for a constable and gave them into his possession; but the constable, in concert with the owner, gave them back to the thief, the owner desiring him to sell them where he sold the others; he went accordingly and sold them to a receiver, who bought them knowing them to have been stolen: it was holden that the receiver could not be convicted; the goods having again come into possession of the owner, they could no longer be deemed stolen goods, so as to make the receiver guilty (*q*). So, a wife who receives goods from her husband, knowing that he has stolen them, cannot be convicted as a receiver (*r*).

It is very rare that a fence goes out himself on a plundering excursion. They are generally old thieves returned from transportation; and even in a plate robbery, although they do not join in the actual commission, they are at home ready with the crucible, which in all probability reduces the silver into bars before the police can be in possession of the robbery having been committed. These fellows are what the swells call "tried men." They have been placed at the bar, lagged, but never split, and therefore to be trusted with anything.

I once searched a house of this description, but was unsuccessful. I apprehended a female some time afterwards, who told me the property was hid in a bed: this was one of the olden school, with massive oak posts, which posts were hollow, with a cork or bung to keep the property from falling when the bedstocks were raised; and if stolen money in gold or silver, so packed that it did not make a noise when removed. Various are the schemes adopted to conceal property so obtained.

### 38. Reformatory Schools.

*By stat. 17 & 18 Vict. c. 86,—An Act for the better Care and Reformation of Youthful Offenders in Great Britain:—*

Sect. 1. *On application from voluntary institution to secretary of state, inspector to report.*] It shall and may be lawful for Her Majesty's secretary of state for the home department, upon application made to him by the directors or managers of any such institution, to direct one of Her Majesty's inspectors of prisons to examine and report to him upon its condition and regulations, and any such institution as shall appear to the satisfaction of the said secretary of state, and shall be certified under his hand and seal, to be useful and efficient for its purpose, shall be held to be a reformatory school under the provisions of this Act: provided always, that it shall be lawful for any of Her Majesty's inspectors of prisons to visit from time to time any reformatory school which shall have been so certified as aforesaid; and if upon the report of any such inspector the said secretary of state shall think proper to withdraw his said certificate, and shall notify such withdrawal under his hand to the directors or managers of the said institution, the same shall forthwith cease to be a reformatory school within the meaning of this Act.

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(*q*) *R. v. Dolan*, 24 Law J. 59, *m*.    (*r*) *R. v. Brooks*, 22 Law J. 121, *m*.



2. *Juvenile offenders, how to be dealt with.*] Whenever after the passing of this Act any person under the age of sixteen years shall be convicted of any offence punishable by law, either upon an indictment or on summary conviction before a police magistrate of the metropolis or other stipendiary magistrate, or before two or more justices of the peace, or before a sheriff or magistrate in Scotland, then and in every such case it shall be lawful for any court, judge, police magistrate of the metropolis, stipendiary magistrate, or any two or more justices of the peace, or in Scotland for any sheriff or magistrate of a burgh or police magistrate, before or by whom such offender shall be so convicted, in addition to the sentence then and there passed as a punishment for his offence, to direct such offender to be sent, at the expiration of his sentence, to some one of the aforesaid reformatory schools to be named in such direction, the directors or managers of which shall be willing to receive him, and to be there detained for a period not less than two years and not exceeding five years, and such offender shall be liable to be detained pursuant to such direction: provided always, that no offender shall be directed to be so sent and detained as aforesaid, unless the sentence passed as a punishment for his offence, at the expiration of which he is directed to be so sent and detained, shall be one of imprisonment for fourteen days at the least; provided also, that the secretary of state for the home department may at any time order any such offender to be discharged from any such school.

3. *Power to treasury to defray cost of maintenance at reformatory school.*] It shall be lawful for the commissioners of Her Majesty's treasury, upon the representation of one of Her Majesty's principal secretaries of state, to defray, out of any funds which shall be provided by parliament for that purpose, either the whole cost of the care and maintenance of any juvenile offender so detained in any reformatory school as aforesaid, at such rate per head as shall be determined by them, or such portion of such cost as shall not have been recovered from the parents or step-parents of such child, as hereinafter provided, or such other portion as shall be recommended by the said secretary of state.

4. *Absconding, or refractory conduct at reformatory school, how to be punished.*] And whereas it is expedient that some provision should be made for the punishment of any juvenile offender, so directed to be detained as aforesaid in any such reformatory school, who shall abscond therefrom, or wilfully neglect or refuse to abide by and conform to the rules thereof: be it enacted, that it shall and may be lawful to and for any justice of the peace, or in Scotland, for any sheriff or magistrate of a burgh, or police magistrate, acting in and for the county, city, borough, riding, or division wherein the said offender shall actually be at the time he shall so abscond, or neglect or refuse as aforesaid, upon the proof thereof made before him upon the oath of one credible witness, by warrant under his hand and seal, or in Scotland under his hand, to commit the party so offending for every such offence to any gaol or house of correction for the said county, city, borough, riding, or division, with or without hard labour, for any period not exceeding three calendar months.



5. *Cost of maintenance to be partly recovered from parents, &c.]* The court by which any juvenile offender is ordered to be detained as aforesaid under this Act shall charge the parent or step-parent of such offender, if of sufficient ability to bear the same, with a sum not exceeding five shillings per week towards the maintenance and support of such juvenile offender while remaining in such reformatory school, such payment to be in relief of the charges on Her Majesty's treasury, in all cases where the treasury shall have defrayed or undertaken to defray the whole of any portion of the maintenance of such offender, and in all other cases such payment to be made to the directors or managers of such reformatory school.

6. *For compelling parent or step-parent to support juvenile offenders while remaining in reformatory school.]* For the better compelling the parent or step-parent, as the case may be, to support and maintain wholly or partly every such juvenile offender while in such reformatory school, the provisions contained in the Act passed in the forty-third year of the reign of Queen Elizabeth, intituled "An Act for the Relief of the Poor," for compelling the parent of every poor person, being of sufficient ability, at their own charges to relieve and maintain such poor person, and also the provisions in the like behalf contained in an Act passed in the fifty-ninth year of the reign of King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor," and in an Act passed in the fifth year of the reign of King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," shall be respectively held and deemed and the same respectively are hereby directed to be applicable, within England and Wales, to the compelling the parent or step-parent respectively of every such juvenile offender to maintain or support him, either wholly or partly, while remaining in such reformatory school, and for the recovery of the weekly payment so charged upon such parent or step-parent; and in Scotland such payment may be sued for and recovered at the instance of the procurator fiscal or of the treasurer of such reformatory school in the sheriff's small debt court, and the provisions of an Act passed in the eighth and ninth years of Her Majesty, intituled "An Act for the Amendment and better Administration of the laws relating to the Relief of the Poor in Scotland," for the punishment of parents deserting their children, or refusing or neglecting to maintain them, shall be held and deemed and are hereby directed to be applicable to the case of parents or step-parents refusing or neglecting to pay the amount so charged upon such parent or step-parent as aforesaid.

7. *Juvenile offenders may be removed from one reformatory school to another.]* It shall and may be lawful for Her Majesty's secretary of state for the home department, if he shall think fit to do so, to remove any such youthful offender from one reformatory school to another: provided always, that such removal shall not increase the period for which such offender was sentenced to remain in a reformatory school.

8. *Act not to apply to Ireland.]* This Act shall not apply to Ireland.



*And by stat. 19 & 20 Vict. c. 109,—An Act to amend the Mode of committing Criminal and Vagrant Children to Reformatory and Industrial Schools :—*

Sect. 1. *Schools to which youthful offenders committed need not be named in the sentence.*] After reciting stat. 17 & 18 Vict. c. 86, and 17 & 18 Vict. c. 74, on this subject, it is enacted that it shall not be necessary at the time of passing sentence for any court, judge, sheriff, or magistrate proceeding under the said first recited Act to name the particular school to which any youthful offender is to be sent, but it shall be sufficient for such court, judge, sheriff, or magistrate to direct that such youthful offender be sent to such school (being a school duly certified under the said Act; and the directors or managers of which may be willing to receive him), as may thereafter, and before the expiration of the term of imprisonment to which he or she has been sentenced, be directed by the chairman or deputy chairman of the said court, or by the said judge, sheriff, or magistrate.

2. *Supplemental orders may be made.*] Any court, judge, sheriff, or magistrate, or the chairman or deputy chairman of such court, having made an order under the authority of either of the said recited Acts or of this Act for sending any young person to any reformatory or industrial school, or in Scotland to any similar institution, may at his or their discretion, make a supplemental order, in England at any time before the expiration of the term of imprisonment to which he or she has been sentenced, and in Scotland at any time within fourteen days of the date of the order, exchanging the name of such school or institution for the name of any other school or institution to which he or she might in the first instance legally have been sent, provided the managers thereof be willing to receive him or her, and such young person shall be sent or transferred to such last mentioned school or institution accordingly.

3. *Young persons not to be sent to schools to which parents, &c. object.*] If the parent or guardian or nearest surviving relative of any young person who may have been sent or to whom it may be intended to send to a school or institution, under the provisions of either of the said recited Acts or of this Act, certify to the judge, sheriff, magistrate, or court, or the chairman or deputy chairman thereof, by whom the order may have been or may be about to be made, within fourteen days from the day of the making of such order or supplemental order as aforesaid, that they object to such young person being sent to or detained in the school or institution named or about to be named in such order or supplemental order, and shall name another school or institution in Great Britain, duly certified as aforesaid, and shall signify their desire that such young person may be sent thereto, and shall prove that the managers thereof are willing to receive such young person, and shall pay or find sufficient security to pay any additional expense which his or her removal may occasion, over and above that of sending him or her to the certified school on which the order shall have been made, in case the removal shall take place before the expiration of his or her imprisonment, and in case the removal shall take place from one



such school or institution to another then to pay the whole expense ; such court, chairman, deputy chairman, judge, sheriff, or magistrate shall direct such young person to be sent to such last mentioned school or institution accordingly.

4. *As to settlement and chargeability of young persons sent from Scotland to any school out of Scotland.*] Provided always, that if any such young person who shall, under the provisions of this Act, be sent from Scotland to any school out of Scotland, shall not have right to a settlement in any parish therein, and might have been removed from Scotland under the provisions of the eighth and ninth of Queen Victoria, chapter eighty-three, at the instance of the inspector of the poor of the parish to which such young person has become chargeable, had he or she not been sent out of Scotland under the provisions of this Act, the chargeability on such parish for such young person shall, on his or her being so sent out of Scotland, cease and determine.

5. *Nothing to diminish power of Secretary of state to order removals, &c.*] Nothing in this Act contained shall be construed to take away or diminish the power of the secretary of state to direct the removal or discharge of young persons from reformatory and industrial schools, or in Scotland from other similar institutions, as set forth in the said recited Acts.

6. *Expenses of conveyance, how to be met.*] The expense of conveying any young persons sentenced in England under the first recited Act or this Act to the reformatory school to which he has been committed, under an original or supplemental order, except any extra or additional expense incurred in conveying any young person, at the request of his or her parents, guardians, or relatives, to any school or institution other than the nearest duly certified school, shall be defrayed by the treasurer of the county, city, or borough in which such sentence was in the first instance passed. The expense of conveying any young person sentenced in Scotland under either of the said recited Acts or this Act to the reformatory or industrial school or other similar institution to which he or she has been ordered to be sent shall, except as aforesaid, be defrayed by the parochial board of the parish on which such young person, if a pauper, would have been chargeable in the first instance. In case of the secretary of state ordering the removal of any young person from one school or institution to another, it shall be lawful for the commissioners or Her Majesty's treasury, on the representation of such secretary of state, to defray the expense of such removal out of any funds which may be provided by parliament for the purpose.

7. *Governor of prison to send duplicate of warrant of commitment, if it exists, with child, to reformatory ; if not, then a copy of warrant.*] It shall be the duty of the governor or keeper of every gaol or house of correction having the custody under sentence of any young person who is ordered to be sent to any reformatory or industrial school, or in Scotland any other similar institution, to forward with such young person to such school or institution an original duplicate, if any such duplicate exists, of the warrant of commitment under which such young person has been imprisoned, and if no such duplicate exists to forward with such young person a copy of such



warrant, and at the foot of such duplicate or copy to make a memorandum stating that the young person named therein and sent therewith is identical with the person delivered with the warrant of which the instrument is a duplicate or copy to such gaol or house of correction, and the said memorandum shall be signed by the governor or keeper aforesaid, and the possession of such warrant or copy of a warrant, with such memorandum so signed, shall be a sufficient authority for the detention of such young person in such school or institution.

8. *What is sufficient evidence as to certificate of school and identity of child.*] Whenever it shall be necessary to prove that any reformatory or industrial school, or other similar institution, is duly certified or sanctioned by the secretary of state, the production of an attested copy of the certificate shall be sufficient evidence thereof; and the production of an original duplicate of the warrant of commitment, or a copy of the warrant of commitment, with a memorandum as aforesaid, signed or purporting to be signed by the governor or keeper of the gaol or house of correction from which the young person in question was sent, as hereinbefore provided, accompanied by a statement signed or purporting to be signed by the manager or superintendent or master or matron of any reformatory or industrial school or other similar institution, that the young person named in such warrant or copy was duly received into and is at the signing thereof detained in such school or institution, or has been otherwise disposed of according to law, shall in all proceedings whatsoever be sufficient evidence of the due conviction and imprisonment, and subsequent detention and identity, of the young person named in such warrant.

9. *Penalty on persons wilfully inducing young persons to abscond from reformatory.*] When any young person has been sentenced under the first recited Act to be detained in any reformatory school, duly certified by the secretary of state, any person who shall directly or indirectly wilfully withdraw such young person from such school or institution, or induce him or her to abscond therefrom before he or she has been regularly discharged, shall be liable for every such offence to a penalty not exceeding five pounds, to be recovered on summary complaint before any justice of the peace, sheriff, or magistrate, at the instance of any officer of such school or institution, or other person authorized by the directors or managers thereof, and failing payment the offender may be imprisoned for any period not exceeding sixty days, and such penalty shall be paid over to the treasurer of the institution in which such young person was placed, for the general purposes thereof.

10. *Secretary of state to publish list of all reformatory or industrial schools in London and Edinburgh Gazettes.*] One of Her Majesty's principal secretaries of state shall, within one calendar month after the passing of this Act, cause to be published in the London and Edinburgh Gazettes a list of all reformatory or industrial schools or other similar institutions which have been already certified under the provisions of either of the said recited Acts; and whenever such secretary of state shall at any time hereafter grant a certificate to any new school or institution, he shall within one



calendar month, cause a notice thereof to be published in the said Gazettes, and such publication shall be a sufficient evidence of the fact of such school or institution having been certified to justify any court, judge, sheriff, or magistrate to commit any young person thereto, subject to the provisions of the said recited Acts and of this Act, and of any other Act or Acts relating to such schools or institutions; and whenever the secretary of state shall withdraw or cancel the certificate granted to any school or institution, he shall give notice of such withdrawal in the said Gazettes within one calendar month of the date thereof.

11. *Justices may use the forms set forth in the schedule.*] It shall be lawful for any justice or justices of the peace in England or Wales, proceeding under this Act, or under the said first-recited Act, or under the Act passed in the last session of parliament, chapter eighty-seven, for amending the same, to use the forms of conviction and commitment, complaints, summonses, orders and warrants, set forth in the schedule to this Act annexed, so far as the same are applicable to each case.

12. *Recited Acts and 18 & 19 Vict. c. 87, to be read as part of this Act.*] The said recited Acts of the seventeenth and eighteenth years of the reign of Her present Majesty, and the said Act of the eighteenth and nineteenth years of her reign for amending the same, shall be read as part of this Act.

13. *Interpretation of the word "court."*] The word "court" shall include all persons having authority under the said recited Acts or either of them, or any Act extending or amending the same, to commit young persons to reformatory or industrial schools or other similar institutions.

## SCHEDULE.

(A.)

*Conviction where the Reformatory School is named at the Time of Conviction (17 & 18 Vict. c. 86, s. 2.)*

— } Be it remembered, that on the — day of — in the  
to wit. } year of our lord —, at — in the [county] of — A. B.  
under the age of sixteen years, to wit, of the age of [thirteen]  
years, is convicted before the undersigned, two of Her Majesty's  
justices of the peace for the said [county], for that [*&c., stating  
the offence in the usual manner*]; and we adjudge the said A. B.,  
for his said offence, to be imprisoned in the [house of correction] at  
— in the said [county], [*and there kept to hard labour,*] for the  
space of —; and we also direct, pursuant to the Acts for the better  
care and reformation of youthful offenders, the said A. B. to be sent  
at the expiration of his [or her] said sentence (\*), to the — re-  
formatory school at — in the county of —, (the directors or  
managers thereof being willing to receive him [or her] therein, and



there detained for the period of —, commencing from the — day of — next [*the date of the expiration of the sentence*].

Given under our hands and seals, the day and year first above mentioned at —, in the [*county*] aforesaid.

J. S. (L.S.)

L. M. (L.S.)

(B.)

*Commitment upon the last Conviction.*

— } To the constable of —, and to the keeper of the  
to wit. } [*house of correction*] at —, in the said [*county*] of —.

Whereas *A. B.*, late of — [*labourer*], under the age of sixteen years, to wit, of the age of [*thirteen*] years, was this day duly convicted before the undersigned, two of Her Majesty's justices of the peace in and for the said [*county*] of —, for that [*&c., stating the offence as in the conviction,*] and it was thereby adjudged that the said *A. B.*, for his said offence, should be imprisoned in the [*house of correction*] at — in the said [*county*], and there to be kept to hard labour for the space of —; and it was also thereby directed, pursuant to the Acts for the better care and reformation of youthful offenders, that the said *A. B.* should be sent, at the expiration of his said sentence (\*), to the — reformatory school at — in the county of — (the directors or managers thereof being willing to receive him therein), there to be detained for the period of — commencing from the — day of — next [*the date of the expiration of the sentence*]:

These are therefore to command you, the said constable of —, to take the said *A. B.*, and him safely convey to the [*house of correction*] at — aforesaid, and there to deliver him to the keeper thereof, together with this precept: And we do hereby command you, the said keeper of the said [*house of correction*] to receive the said *A. B.* into your custody in the said [*house of correction*], there to imprison him [*and keep him to hard labour*] for the space of —: [And we further command you, the said keeper, to send the said *A. B.* at the expiration of his said sentence to the said reformatory school at — aforesaid, as and in the manner directed by section 6 of the statute 19 & 20 Victoria, chapter —]; And for so doing this shall be your sufficient warrant.

Given under our hands and seals this — day of — in the year of our Lord —, at —, in the [*county*] aforesaid.

J. S. (L.S.)

L. M. (L.S.)

(C.)

*Conviction where School not named at the Time of Conviction*  
(19 & 20 Vict. c. 109, s. 1.)

*Proceed to the asterisk (\*) in the form (A.), and then say, to some reformatory school, duly certified under the said Acts, as we may*



hereafter, and before the expiration of the said term of imprisonment, name, order, and direct in this behalf, and there detained for the period of — years, commencing from the — day of — next [*the date of the expiration of the sentence*].

Given, &c.

(D.)

*Commitment under the last Conviction.*

*Proceed to the asterisk (\*) in the form (B.), and then say, to some reformatory school, duly certified under the said Acts, as we might hereafter, and before the expiration of the said term of imprisonment, name, order, and direct in that behalf, there to be detained for the period of — years, commencing from the — day of — next [*the date of the expiration of the said sentence*]; and of which order and direction you the said keeper of the said [*house of correction*] will have due notice:*

These are therefore [*&c., as in the form (B.), omitting the words "and we further command you," &c., between brackets*].

(E.)

*Order of Justices naming the Reformatory School, when not named at the Time of Committal (19 & 20 Vict. c. 109, s. 1.)*

To the keeper of the [*house of correction*] at —, and to all others whom it may concern.

— } Whereas *A. B.* of, &c. was on the — day of —, com-  
to wit. } mitted by our warrant to the custody of you the said keeper  
of the said [*house of correction*] for the space of —, and he is now  
in your custody therein; and by the conviction and warrant in that  
behalf it was directed, pursuant to the Acts for the better care and  
reformation of youthful offenders, that the said *A. B.* should be sent,  
at the expiration of his said sentence (\*), to some reformatory school,  
as we might thereafter name, order, and direct, there to be detained  
for the period of — years, commencing from the — day of —  
next [*the date of the expiration of the said sentence*]: And whereas  
the directors [*or managers*] of the — reformatory school at —,  
in the county of —, are willing to receive the said *A. B.* therein;  
now, therefore, we, the said justices, do order and direct, pursuant to  
the acts aforesaid, that the said *A. B.* shall be sent, at the expiration  
of the said term of imprisonment to which he has been so sentenced,  
to the said — reformatory school at — aforesaid, there to be  
detained for the period of — years, commencing from the said —  
day of —; and we do hereby command you the said keeper to obey  
this our order and direction accordingly, and in the manner directed



by section 6 of the statute 19 & 20 Vict. c. 109; and for your so doing this shall be your sufficient warrant.

Given under our hands and seals this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

*J. S.* (L.S.)

*L. M.* (L.S.)

[*N.B.*—A copy or duplicate of this order should accompany the commitment when the offender is sent to the reformatory school.]

(F.)

*Supplemental Order of Justices changing the Reformatory School*  
(19 & 20 Vict. c. 109, s. 2).

*Proceed as in the form (E.) to the asterisk (\*) and then say, to the — reformatory school at —, in the county of —, there to be detained for the period of — years, commencing from the — day of —: And whereas it appears to us desirable that the name of the said reformatory school should be exchanged for the name of the — reformatory school at — in the county of — (the directors or managers of which said last-mentioned school being willing to receive the said A. B. therein): Now, therefore, we, the said justices, do, by this our supplemental order, made pursuant to the Act in that behalf, exchange the name of the said reformatory school accordingly, and do hereby command you, the said keeper of the said [house of correction] at — aforesaid, to send and transfer the said A. B. to the said last-mentioned reformatory school at — aforesaid, instead of the school named and directed in our aforesaid warrant of commitment.*

Given, &c. [*as in the form (E.)*]

(G.)

*Complaint for enforcing in England and Wales Contribution to the Maintenance of a Youthful Offender from the Parent* (18 & 19 Vict. c. 87, s. 2).

— } The complaint of C. D. of, &c., who has been duly authorized by —, one of Her Majesty's principal secretaries of state, to take proceedings in this behalf, under the statute 18th & 19th Victoria, chapter 87, made to us, the undersigned, two of Her Majesty's justices of the peace for the said county of —, this — day of —, in the year of our Lord —, at —, in the same county, who saith, that one A. B. of (\*) the age of — years, or thereabouts, is now detained in the — reformatory school at — in the county of —, under the Acts for the better care and reformation of youthful offenders, and has been duly ordered and directed to be detained therein until the — day of —: That one C. B. dwelling in the parish of —, in the county of —, is the parent [*or step-parent*] of the said A. B., and is of sufficient ability to contribute to the support and maintenance of the said A. B., his son: (\*) The said



complainant therefore prays that the said *C. B.* may be summoned to show cause why an order should not be made on him so to contribute.

Exhibited before us,

*C. D.*

*J. S.*

*L. M.*

(H.)

*Summons to the Parent.*

(*This will be in the form (A.) in the schedule to the 11th & 12th Vict. cap. 43.*)

(I.)

*Order on Parent to contribute a Weekly Sum.*

Be it remembered, that on this — day of —, in the year of our Lord 18—, at —, in the [*county*] of —, a certain complaint of *C. D.* of, &c., who was duly authorized by one of Her Majesty's principal secretaries of state to take proceedings in this behalf, under the statute 18th & 19th Victoria, cap. 87, for that one *A. B.* of, &c., [*stating the cause of complaint, as in the form (G.) between the asterisks (\*) (\*)*], was duly heard by and before us, the undersigned, two of Her Majesty's justices of the peace in and for the said [*county*] of — (in the presence and hearing of the said *C. B.*, if so, or the said *C. B.* not appearing to the summons duly issued and served in this behalf); and we, having duly examined into the ability of the said *C. B.*, and on consideration of all the circumstances of the case, do order the said *C. B.* to pay to the said *C. D.*, or to such other person as the said secretary of state may from time to time appoint to receive the same, the sum of — shillings per week from the date of this order until the — day of —, the same to be paid at the expiration of each [*twenty-eight, or as the case may be, days*],

Given under our hands and seals the day and year first above mentioned, at — in the [*county*] aforesaid.

*J. S.* (L.S.)

*L. M.* (L.S.)

(K.)

*Distress Warrant for Amount in Arrear.*

— } To the constable of —, and to all other peace officers in  
to wit. } the said [*county*] of —.

Whereas upon the hearing of a complaint made by one of Her Majesty's principal secretaries of state under the statute 18th & 19th Victoria, chapter 87, that *A. B.* of, &c., [*stating the cause of complaint as in the form (G.) between the asterisks (\*) (\*)*], an order was



made on the — day of —, in the year of our Lord —, by us, the undersigned [*or by L. M. and J. H.*], two of Her Majesty's justices of the peace in and for the said [*county*] of —, against the said *C. B.*, to pay to *C. D.* of, &c., or to such other person as the said secretary of state might from time to time appoint to receive the same, the sum of — per week from the date of the said order until the — day of —, the same to be paid at the expiration of each [*twenty-eight*] days [*or, as the case may be*] (\*): And whereas there is due upon the said order the sum of — being for [*three*] periods of [*twenty-eight*] days each, and default has been made therein for the space of fourteen days:

These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *C. B.*, and if within the space of [*five*] days next after the making of such distress the said last-mentioned sum, together with the reasonable charge of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to — the clerk of the justices of the peace for the — of — that he may pay and apply the same as by law directed, and may render the overplus (if any), on demand, to the said *C. B.*; and if no such distress can be found, then that you certify the same unto us, to the end that such proceedings may be had therein as to the law doth appertain.

Given under our hands and seals this — day of —, in the year of our Lord —, at —, in the [*county*] aforesaid.

*J. S.* (L.S.)  
*L. M.* (L.S.)

(L.)

*Commitment in default of Distress.*

— } To the constable of — and to the keeper of the [*house*  
to wit. } of correction] at — in the said [*county*] of —.

Whereas [*&c., as in the last form (K.) to the single asterisk (\*), and then thus*]: And whereas afterwards, on the — day of — last, I the undersigned, together with *L. M.*, esquire, [*or J. S. and L. M. esquires,*] two of Her Majesty's justices of the peace in and for the said [*county*] of —, issued a warrant to the constable of — aforesaid commanding him to levy the sum of — due upon the said recited order, being for [*three*] periods of [*twenty-eight*] days, by distress and sale of the goods and chattels of the said *C. B.*: And whereas a return has this day been made to me the said justice [*or, the undersigned, one of Her Majesty's justices of the peace in and for the said [county] of —*], that no sufficient goods of the said *C. B.* can be found: these are therefore to command you, the said constable of —, to take the said *C. B.*, and him safely to convey to the [*house of correction*] at — aforesaid, and there deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said [*house of correction*], to receive the said *C. B.* into your custody in the said [*house of correction*], there to imprison him for the term of —, unless the said sum, and



all costs and charges of the said distress, and of the commitment and conveying of the said *C. B.* to the said [*house of correction*], amounting to the further sum of —, shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of — in the year of our Lord —, at —, in the [*county*] aforesaid.

*J. S.* (L.S.)

*And by stat. 20 & 21 Vict. c. 55,—An Act to promote the Establishment and Extension of Reformatory Schools in England.*

For promoting the establishment and extension of reformatory schools in England, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same as follows:—

Sect. 1. *Grants in aid of such schools.*] It shall be lawful for the justices of the peace of any county, in general or quarter sessions, or for the council of any borough having a separate court of sessions of the peace, upon the application of the directors or managers of any reformatory school for youthful offenders already established, in whole or in part, by voluntary contributions, or of the promoters of a reformatory school intended to be so established, to make an order for the payment of money in aid of such reformatory school, or of the establishment thereof, subject to such conditions as may be agreed upon between such justices or council and such directors, managers, or promoters.

2. *Previous notice.*] Not less than two months notice shall be given by the clerk of the peace of such county, in some newspaper or newspapers commonly circulated in such county, of the day on which any motion for such order under this Act is to be considered, and the clerk of the peace for the county shall give such notice on the requisition by any five justices acting for such county; and every order by the council of any borough for the payment of money shall be made at a special meeting of such council to be called for that purpose, and notice of such intended resolution shall be given two months before the meeting of the council by advertisement in some newspaper or newspapers generally circulating within the said borough.

3. *Money how applied.*] The money ordered to be paid under this Act in aid of a reformatory school shall be applicable to the following purposes, viz.:—

Towards defraying the expenses of purchasing the site of a school on its first establishment, or the site of any extension or new establishment for the purposes of a school already established, or the expenses of building or fitting up a school on its first establishment, or erecting, altering, or enlarging or fitting up any buildings for the extension or improvement of a school already established; and the justices or council, as the case may be, shall provide for the application of such money accordingly.



4. *How in the cases of schools already established.*] Provided, that no money shall be ordered to be paid under this Act in aid of any reformatory school established at the time of the grant, unless the institution has been certified by the secretary of state under the provisions of the Act of the session holden in the seventeenth and eighteenth years of Her Majesty, chapter eighty-six, to be useful and efficient for its purpose, nor shall any money be paid under any such order in aid of any school which shall have been so certified in in case such certificate shall have been withdrawn; and in every case where money is ordered to be paid under this Act the plan and particulars of the school intended to be established or of the extension or new establishment for the purposes of a school already established (as the case may be) shall, before payment of money under the order, be submitted to and approved of by one of Her Majesty's principal secretaries of state.

5. *Contract by county or borough for the reception of offenders.*] It shall be lawful for the justices of the peace of any county in general or quarter sessions (notice having been given as herein provided in the case of an order for the payment of money), or for the council of any borough having a separate court of sessions of the peace, at a special meeting of such council called for the purpose, to appoint and empower a committee of such justices or council to enter into an agreement with the directors or managers of any reformatory school, certified as aforesaid for the reception and keeping in such school from time to time of offenders from such county or borough sentenced to be detained in a reformatory school, in consideration of such periodical payments as may be agreed upon with such managers or directors; and such justices or council may direct the payment of the money which may from time to time become payable under such agreement.

6. *Schools, how visited.*] In every reformatory school aided by a grant of money under this Act, or in relation to which any such agreement as last aforesaid shall have been entered into, it shall be lawful, upon the representations of the parent, or in case of an orphan then of the guardian or nearest adult relative, of any offender detained in any such school, for a minister of the religious persuasion of such offender, at certain fixed hours of the day, which shall be fixed by the managers or directors for the purpose, to visit such school for the purpose of affording religious assistance to such offender, and also for the purpose of instructing such offender in the principles of his religion.

7. *Monies granted, how raised.*] All monies ordered to be paid under this Act by any justices or council shall be raised and paid in the same manner and subject to the same conditions as monies to be raised by the justices or council respectively for building, rebuilding, or enlarging any gaol under their respective management; and all monies directed to be paid from time to time by any justices or council, in pursuance of any agreement under this Act, shall be raised and paid in the same manner as monies to be raised for the ordinary current expenditure of their several gaols.

8. *Contribution by parents, how enforced.*] In every case in which any juvenile offender shall be sentenced to be detained in a



reformatory school under the said Act of the seventeenth and eighteenth years of Her Majesty, or any of the Acts amending the same, by any justice of the peace in petty sessions, or by any stipendiary or police magistrate in England and Wales, such justices or magistrate, at the time of passing such sentence, or within fourteen days thereof, may issue a summons calling upon the parent or step-parent of such offender to appear before them or him, and on the hearing of such summons, whether the party summoned shall appear or not, may examine into the ability of such parent or step-parent to contribute to such offender's support and maintenance, and may make an order upon him or her for the payment of such weekly sum (not exceeding five shillings) as shall seem reasonable during the whole or any part of the detention of such offender in such reformatory school; and in every case in which such sentence of detention shall be passed by any court of assize or quarter sessions in England and Wales, such court shall direct any officer of the same to certify the said sentence to the next meeting of justices in petty sessions for the district or town from which such offender shall have been committed (or to any police or stipendiary magistrate of the said district, as the case may be), and such justices or magistrate may proceed to summon the parent or step-parent of such offender, and to make an order upon him or her in manner hereinbefore provided, as if the sentence had been passed by themselves or himself in due course of law.

9. *Proceedings for contribution, when taken.*] In any case wherein no such order shall have been made as herein provided, it shall be lawful at any time during detention of such juvenile offender, for any two justices of the peace or any police or stipendiary magistrate in England or Wales acting for the county or borough or other jurisdiction within which the parent or step-parent of such offender shall be residing, on the complaint of any person authorized by one of Her Majesty's principal secretaries of state to take proceedings under the said Acts or any of them, to summon such parent or step-parent before them, and to examine into his or her ability, and to make such order for a sum not exceeding five shillings per week to be paid by him or her as aforesaid.

10. *When contributions remitted, reduced, or increased.*] Provided also, that it shall be lawful for any two justices of the peace or for any police or stipendiary magistrate in England or Wales from time to time, on the representation of such parent or step-parent, or any person authorized by the secretary of state to take proceedings as aforesaid, at any time while the first order continues in force, to make further inquiry into the parent's or step-parent's ability, and to remit or lessen the amount of the weekly payment that shall have been previously assessed upon him or her, or to increase the same, if they see cause so to do, so that the amount shall not in any case exceed five shillings weekly.

11. *Payments, how made.*] All such payments shall be directed by the order to be made to some person to be appointed by one of Her Majesty's principal secretaries of state to receive such payments within the jurisdiction of the court or justices or police or stipendiary magistrate making the order, or to his agent duly authorized in that



behalf, by him to be accounted for and paid over as the commissioners of Her Majesty's treasury may direct.

12. *Proceedings on default of payment.*] All the provisions of the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter eighty-seven, which have reference to the case of default being made in the payment of any sum of money which may have become payable by any parent or step-parent under an order made by virtue of that Act, shall be applicable in every respect to every case of default in the payment of any sums directed to be paid by any order made under and by virtue of the present Act; and so much of section two of the said Act of the eighteenth and nineteenth years of Her Majesty as is inconsistent with the provisions hereinbefore contained shall be repealed.

13. *Care of juvenile offenders when discharged.*] Whereas it is expedient to make further provision for the due care and protection of juvenile offenders discharged from reformatory schools: it shall be lawful for the managers of any reformatory school, previous to making application for the discharge of any juvenile offender committed to such school, to place such offender on trial with some person, to be named in the licence hereinafter, most willing to receive and take charge of him, and to grant to such offender a licence under their hands or the hand of any one of them to reside with such person for any term not exceeding thirty days, unless sooner called upon by the said managers to return to the said school, and to require such offender to return to the said school at any time during the same; and such managers shall bring back such offender to the said school at the expiration of the said term, provided that such offender shall not have been previously discharged from the school by order of the secretary of state: and any offender who shall abscond from such person during such term, or shall refuse to return to the reformatory school at the end of such term, or before the end of the time when so required, shall be held to have absconded from the school, and shall be liable to the penalties in that case made and provided: provided always, that no such offender shall be so placed out before the expiration of one half of the term of detention to which he was originally sentenced,

14. *Harbouring persons absconding.*] Any person who, knowing any young person to have withdrawn or to have absconded from any such school or institution as aforesaid, shall harbour or conceal or assist in concealing such young person, or prevent him or her from returning to such school or institution, shall be liable to the penalty imposed by an Act of the nineteenth and twentieth years of Her Majesty, chapter one hundred and nine, on any one wilfully withdrawing or inducing any young person to abscond from any such school, to be recovered and applied in manner therein mentioned, and failing payment thereof shall be liable to be imprisoned, as in the said enactment mentioned.

15. *Interpretation clause.*] In this Act the word "county" shall mean and include every riding, part or division of a county, and every liberty having a separate commission of the peace; and the word "borough" shall include every city or other place mentioned in the schedules to the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, (to provide



for the regulation of municipal corporations in England and Wales,) or to which a charter of incorporation has since been granted.

16. This Act shall extend only to England.

*And by stat. 20 & 21 Vict. c. 48,—An Act to make better Provision for the Care and Education of vagrant, destitute, and disorderly Children, and for the Extension of Industrial Schools.*

[17th August, 1857.]

Whereas industrial schools for the better training of vagrant children have been and may be established in various parts of England, and it is expedient that more extensive use should be made of such institutions, and that the responsibility of parents to provide for the proper care of their children should be enforced: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same as follows:—

Sect. 1. This Act may be cited as the "Industrial Schools Act, 1857."

2. *Interpretation clause.*] The following words and expressions shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction:

"Police" shall include every policeman, police constable, parish constable, tithingman, or headborough:

"Justices" shall include any two or more justices of the peace acting together, and also any person who by the Act of the eleventh and twelfth years of Her present Majesty, chapter forty-three, sections thirty-three and thirty-four, is authorized to do alone whatsoever is authorized by that Act to be done by two or more justices of the peace:

"Child" shall include any boy or girl who in the opinion of the justices is above the age of seven and under the age of fourteen:

"Certified industrial school" shall mean any school or institution certified under this Act:

"Managers" shall include the directors, managers, or other persons who shall have the management or control of any certified industrial school:

"Parent" shall include any person legally liable to maintain a child, and also any person upon whom an order for affiliation has been made and not quashed:

"County" shall include any city, borough, riding, or division of a county having a separate commission of the peace.

3. *School, how certified.*] The committee of Her Majesty's privy council on education may, upon the application of the managers of any school in which industrial training is provided, and in which children are fed as well as taught, direct such person as they may appoint to examine and report to them upon its condition and regulations, and, if satisfied therewith, may grant a certificate under the hand of the president of Her Majesty's privy council or of the vice-president of the said committee thereof, and thenceforth the school



shall be a certified industrial school within the meaning of this Act; provided always, that no school shall be certified both under this Act and under the Act of the seventeenth and eighteenth Victoria, chapter eighty-six.

4. *Inspector's report.*] The said committee shall direct a report of the condition and regulations of every certified industrial school to be made to them at least once in each year by such person as they may appoint; and if upon his report the committee is dissatisfied with the condition or regulations of the school, they may withdraw their certificate, and, upon notice in writing of such withdrawal having been given to the managers thereof, the school shall cease to be a certified industrial school from such time as shall be specified in the notice.

5. *What children to be sent to these schools.*] When any child is taken into custody on a charge of vagrancy under any local or general Act, the justices, on receiving satisfactory proof in support of such charge, may, if the parent, or in case of an orphan, if the guardian or nearest adult relative, of the child cannot at once be found, and provided there be any certified industrial school, the managers of which are willing to receive him, order the child to be sent to such industrial school for any period not exceeding one week, and shall direct due inquiries to be made, and notice (Form A.) to be given to the parent or guardian or nearest adult relative of the child, if any can be found, or to the persons with whom the child is or was last known to have been residing, of the circumstances under which the child has been taken into custody, and that the matter will be inquired into at the time and place mentioned in the notice.

6. *Child, when and on what terms delivered up to parent.*] At the time and place mentioned in the notice, any justices may make full inquiry into the matter, and may, if they shall think fit, order the child to be discharged altogether, or if the parent (or where the child is an orphan, then the guardians or nearest adult relative), be found, may, on conviction of such child on such charge as aforesaid, deliver him up to his parent (or where the child is an orphan, to the guardian or nearest adult relative as aforesaid), on his giving an assurance in writing (Form B.) that he will be responsible for the good behaviour of the child for any period not exceeding twelve months, and in default of such assurance being given may, by writing under their hands and seals (Form C.), order the child to be sent for such period as they may think necessary for his education and training to any certified industrial school, the managers of which are willing to receive him: Provided, however, if within the county where the child was taken into custody, or any adjoining county, there shall be any certified industrial school conducted on the principles of the religious persuasion to which the parent of the child in the opinion of the justices shall belong, and the managers of such school shall be willing to receive him, such child shall be sent to such last-mentioned school, and not to any other.

7. *In what cases parent liable to penalty.*] If the child after such assurance as aforesaid being given, be brought up again on a similar charge within the period for which the parent, or in case of an orphan,



the guardian or nearest adult relative, has become responsible for his good behaviour, the justices may inflict a fine upon the parent or guardian or nearest adult relative as aforesaid, not exceeding forty shillings, should it be proved, to the satisfaction of the justices, that the last-mentioned act of vagrancy has taken place through the neglect of the parent.

8. *Time at school not reckoned under 9 & 10 Vict. c. 66.]* The time during which any child shall be lodged in any certified industrial school under this Act shall, for all the purposes of the Act of the ninth and tenth years of the reign of Her present Majesty, chapter sixty-six, and of every Act incorporated therewith, be excluded in the computation of the time therein mentioned.

9. *In what cases parent may have child sent to a school he approves.]* If the parent, or in case of an orphan, if the guardian or nearest adult relative, objects to the certified industrial school to which the child has been sent or ordered to be sent, and proposes some other certified industrial school, and proves that the managers of it are willing to receive the child, and, if on any other than religious ground, pays or finds good security to pay any expenses which may be incurred in consequence of his objection, any justice of the county where the child was taken into custody shall order (Form D.) the child to be sent to the certified industrial school proposed by the parent or guardian or nearest adult relative as aforesaid.

10. *Book to be kept for visits of clergymen.]* In every industrial school a book shall be kept by the managers, to which access shall be had at all reasonable hours, in which the religious denomination of the child when admitted to the industrial school shall be entered; and it shall be lawful upon the representation of the parent, or in case of an orphan, then of the guardian or nearest adult relative, of any inmate placed in such industrial school under the provisions of this Act, for a minister of the religious persuasion of the inmate of such industrial school, at certain fixed hours of the day, which shall be fixed by the managers for the purpose, to visit such schools for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing such inmate in the principles of his religion.

11. *Duplicate of order to be given to managers.]* A duplicate of the order under which any child is in pursuance of this Act ordered to be sent to a certified industrial school shall be sent to the managers thereof, and shall be a sufficient warrant for the detention of the child.

12. *In what cases child discharged from school.]* On the application of the parent, or in case of an orphan, then of the guardian or nearest adult relative, or of the managers, any justices of the county in which the school is situate, or of the county where such parent resides, if satisfied that a suitable employment in life has been provided for the child, or that there is otherwise sufficient cause, may discharge (Form E.) the child from the certified industrial school before the full expiration of the period for which he has been sent there, or may order his removal from one certified industrial school to another (Form F.), or may order him to be discharged altogether.



13. *Child discharged on security given.*] On good security being at any time found by the parent or by any other person, any justices of the county in which the certified industrial school to which the child has been sent is situate or of the county where such parent resides shall order (Form G.) the child to be discharged therefrom ; provided always, that the security shall be in such amount as the justices determine, or may be rejected by them altogether, on its being proved to their satisfaction that security for the child has at any time and under any circumstances been previously rejected or forfeited.

14. *Child not detained after fifteen.*] No person shall be detained in any certified industrial school under this Act beyond the age of fifteen years against his consent.

15. *Payment by parent.*] Any justices of the county in which the certified industrial school to which the child has been sent is situate, or in which the parent is residing, may, upon the complaint of the managers, summon the parent and examine into his circumstances, and in their discretion may order him (Form H.) to pay to such managers, or to any person authorized by them from time to time to receive it, a weekly sum not exceeding three shillings, until the child attains the age of fifteen years, or is lawfully discharged ; and on default of payment for the space of fourteen days the like proceedings may be taken for enforcing and recovering the same as are hereinafter provided for the enforcing and recovering of any penalty or forfeiture imposed by this Act.

16. *Payment may be diminished or increased.*] The parent or the managers may at any time apply to any justices of the county in which the certified industrial school is situate, or in which the parent is residing, for an order to diminish the amount of the weekly sum payable by the parent, or to increase it to an amount not exceeding three shillings per week ; and the justices, on proof that the parent or the managers have given to each other (as the case may be) not less than one week's notice in writing of the intended application, and of the time and place of hearing the same, shall make full inquiry into the matter, and may diminish or increase the amount of the weekly sum payable by the parent, as they think fit, or may release him from such payment altogether (Forms I. and K.)

17. *Children to be allowed to sleep out of school.*] The managers may, at their discretion, permit any child to sleep or lodge at the dwelling of his parent, or of any trustworthy and respectable person, and may also, at their discretion revoke such permission ; provided always, that they shall continue to board and feed the child in all respects as if he were lodging in the certified industrial school.

18. *Children absconding, &c., sent back to the school.*] If a child, whether lodging in the school or elsewhere, before attaining the age of fifteen years, or being duly discharged, wilfully absconds from the school, or neglects his attendance thereat, any justice of the county in which the certified industrial school is situate, or in which the child is re-taken, may by writing under his hand and seal, order him to be sent back to the school, and to be detained there until he attains



the age of fifteen years, or for such shorter period as the justices think fit.

19. *Inducing children to abscond, &c., or harbouring them.*] Any person who directly or indirectly withdraws a child from the certified industrial school to which he has been sent, or induces him to abscond therefrom, previous to his attaining the age of fifteen years, or being duly discharged, or who knowingly conceals or harbours him, or in any way prevents his return, shall for every such offence be liable in a penalty not exceeding two pounds, to be recovered by summary proceedings before two justices in or near the place where the offence is committed, or where the offender may at the time being happen to be, in manner provided by the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three.

20. *Service of notices.*] The leaving of any summons or notice or order authorized to be issued or made by any justices under this Act at the usual or last known place of abode of the party to whom the same respectively is directed shall in every case be deemed a good and sufficient service thereof.

21. *Guardians may contract with managers.*] The guardians of any union or any parish wherein the relief to the poor is administered by a board of guardians may, if they deem proper, with consent of the poor law board, contract with the managers of any certified industrial school for the maintenance and education of any pauper child.

22. *Evidence of certificate of school, identity of child, and making of orders.*] Whenever it shall be necessary to prove that any industrial school is duly certified or sanctioned under this Act, the production of an attested copy of the certificate shall be sufficient evidence thereof; and the production of an original duplicate of the order under which any child has been sent to or is detained in any certified industrial school under this Act, or a copy of such order with a memorandum signed by the manager or superintendent, or master or matron of any such school, that the young person named in such order was duly received into and is at the signing thereof detained in such school, or has been otherwise disposed of according to law, and the production of an original duplicate of any order made upon the parent under this Act, or a copy thereof certified by the clerk to the justices making the same to be a correct copy, shall in all proceedings whatsoever be sufficient evidence of the due making and signing of all or any of such orders, memorandum, and certificate respectively, and of the sending, detention, and identity of the child or parent named in such orders respectively, without proof of the signatures or official characters of the justices or other persons appearing to have signed the same respectively.

23. *Notice of certified schools in Gazette.*] Whenever the committee of Her Majesty's privy council on education shall at any time grant a certificate under this Act to any industrial school, they shall within one calendar month cause a notice thereof to be published in the London Gazette, and such publication shall be a sufficient evidence of the fact of such industrial school having been certified



to justify any justices to commit any child thereto, subject to the provisions of this Act; and whenever the committee shall withdraw the certificate granted to any industrial school, they shall within one calendar month give notice of such withdrawal in the said Gazette.

24. *Forms.*] The several forms in the schedule to this Act annexed, or any forms to the like effect, shall in all cases be sufficient; provided always, that any summons, notice, or order shall not be invalidated for want of form only.

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## SCHEDULES.

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### (A.)

#### *Notice by Police to Parent, &c. of Child being in Custody, &c.*

To *C. B.* of the parish of — in the county of —:

I hereby give you notice, pursuant to section 5 of the "Industrial Schools Act, 1857," that a child named *A. B.*, apparently about — years of age, the son of [*or who has been residing with you the said C. B.*, has been taken into custody for having been on the — day of —, in the parish of — in the said *county* of — found [*in the words of the local or general Act*], and that the matter will be inquired into on — the — day of —, at — o'clock in the forenoon, at —, before such justices of the peace for the said *county* as may then be there, who may make such order on you the said *C. B.*, to be dealt with according to the said Act, as they may think fit; the said *A. B.* is in the meantime detained in the — at —, by the order of a justice of the peace.

Dated this — day of —, 18—.

*M. N.* { Constable, inspector, *or* superintendent of police of —.

### (B.)

#### *Form of Assurance of Parent for good Behaviour of Child.*

Whereas a child named *A. B.*, the son of *C. D.*, has been proved a vagrant; I *C. D.* hereby undertake to be responsible for the good behaviour of the said child for the period of — months from the day of the date thereof.



## (C.)

*Order sending Child to Industrial School.*

— } To the constable of — and to the managers of the —  
to wit. } certified industrial school at — :

Whereas a certain child named *A. B.*, about — years of age, was this day brought before us, two of Her Majesty's justices of the peace for the county of —, for that he, on the — day of —, at —, was found in the act of vagrancy, [*or, as the case may be in section 5*]: And whereas we have made full inquiry into the matter, pursuant to the "Industrial Schools Act, 1857," and no satisfactory assurance has been given for the future proper care and good behaviour of the said child: Now therefore we, the said justices, do, pursuant to section 6 of the said Act, order you, the said constable to take the said child, and him safely convey to the — certified industrial school at — aforesaid, and there to deliver him, together with this order; and we do hereby command you the said managers (it appearing to us that you are willing to receive him therein) to receive the said child into your charge in the said school, and there to detain, educate, and train him for the period of — from the date hereof.

Given under our hands and seals, this — day of — at — in the county aforesaid.

[*Signatures and seals of justices.*]

## (D.)

*Second Order changing School.*

To the managers of the — certified industrial school at —  
and to the managers of the — certified industrial school  
at — :

Whereas a certain child named *A. B.*, about — years of age, was on the — day of —, by the order of —, two of Her Majesty's justices of the peace for the county of — pursuant to the "Industrial Schools Act, 1857," taken to the — certified industrial school at —, there to be detained for the period of — from the said day of —, and he is now detained therein [*if so*]: And whereas *C. B.*, according to the provisions of the said Act entitled to object has objected to the said school, and has proposed the — certified industrial school at —, and proved to me the undersigned, one of Her Majesty's justices of the peace for the county of —, where the child was taken into custody, that the managers of the — certified industrial school at — are willing to receive the said child, and the said *C. D.* has also complied with the other conditions of section 9 of the said Act: These are, therefore, pursuant to section 9 of the said Act, to order you the said managers of the — certified industrial school at — to deliver



up the said child forthwith to the ——— certified industrial school at ———; and you the said managers of the said last-mentioned school are hereby required to receive the said child into your charge in the said school, and there to detain, educate, and train him for the period of ——— from the ——— day of ———.

Given under my hand and seal this ——— day of ———, at ——— in the *county* aforesaid.

J. S. (L.S.)

(E.)

*Order for Discharge of Child on Employment being found for him.*

To the managers of the ——— certified industrial school at ——— :

Whereas a certain child named *A. B.*, about ——— years of age, was on the ——— day of ———, by the order of ——— two of Her Majesty's justices of the peace for the county of ———, made pursuant to the "Industrial Schools Act, 1857," taken to the ——— certified industrial school at ———, there to be detained for the period of ——— from the said ——— day of ———, and he is now detained therein:\* And whereas it appears to us, two of Her Majesty's justices of the peace for the *county* of ——— in which the school is situate [*or in which the parent or guardian or nearest adult relative of the said child resides*], that suitable employment in life has been provided for the said child [*or there appears to us, &c. sufficient cause for the discharge of the said child*]: These are therefore, pursuant to section 12 of the said Act, to command you, the said managers, forthwith to discharge the said child and to deliver him into the charge of ———, who brings this order.

Given under our hands and seals this ——— day of ———, at ——— in the *county* aforesaid.

[*Signatures and seals of justices.*]

(F.)

*Order changing School on Assurance being given for future good Behaviour.*

To the managers of the ——— certified industrial school at ———, and to the managers of the ——— certified industrial school at ———.

[*Proceed to the asterisk\* in the Form (E.), and then say*]: And whereas it appears to us desirable that the said child should be removed from the said ——— certified industrial school to the said ——— certified industrial school (the managers of which said last-mentioned school being willing to receive the said child therein): These are therefore, pursuant to section 12 of the said Act, to order you the said managers of the ——— certified industrial school at ——— to deliver up the said child forthwith to the ——— certified industrial



school, or to any person authorized by them to receive the child, at —; and you the said managers of the said last-mentioned school are hereby required to receive the said child into your charge in the said school, and there to detain, educate, and train him for the period of — from the — day of —.

Given under our hands and seals this — day of —, at — in the *county* aforesaid.

[*Justices signatures and seals.*]

(G.)

*Order for Discharge of Child on Security given for future good Behaviour.*

[*Proceed to the asterisk \* in the Form (E.), and then say*]: And whereas good security has been found before us, two of Her Majesty's justices of the peace for the *county* of —, in which the school is situate [*or in which the parent or guardian or nearest adult relative of the said child resides*], for the future good behaviour of the said child\*: These are therefore, pursuant to section 13 of the said Act, to command you, the said managers, forthwith to discharge the said child, and to deliver him into the charge of —, who brings this order.

Given under our hands and seals this — day of —, at — in the *county* aforesaid.

[*Signatures and seals of justices.*]

(H.)

*Order on Parent to pay weekly Sum to Managers of School.*

To *C. B.* of — in the *county* of —, *carpenter*:

Be it remembered, that on this — day of —, in the year of our Lord 18—, at — in the *county* of —, a certain complaint of *E. F.*, one of the managers of the — certified industrial school at —, made under section 14 of the "Industrial Schools Act, 1857," for that by a certain order of justices bearing date the — day of —, a certain child named *A. B.*, of the age of — years, was sent to and is now detained in the said certified industrial school pursuant to the said Act, and that the said child is the son of the said *C. B.* [*or was, at the time of his removal to the said school, residing with the said C. B.*], was duly heard by and before us, the undersigned, two of Her Majesty's justices of the peace in and for the said *county* of —, (wherein the said school is situate, *or* wherein the said *C. B.* is residing,) in the presence and hearing of the said *C. B.* [*if so, or the said C. B. not appearing to the summons duly issued and served in this behalf*]: and we, having duly examined into the circumstances of the said *C. B.*, do, pursuant to section 14 of the said Act, order the said *C. B.*, weekly, and every week from the — day of —, to pay to the managers of the said certified industrial school, or to such person as the said managers



may from time to time authorize to receive the same, the sum of — shillings for the maintenance, clothing, education, care, and training of the said child, until the said child shall attain the age of fifteen years, or shall be lawfully discharged from the said school.

Given under our hands and seals this — day of —, at — in the *county* aforesaid.

[*Justices signatures and seals.*]

(I.)

*Order diminishing or increasing weekly Payment by Parent.*

To *C. B.* of —, and to the managers of the — certified industrial school at —:

Whereas by a certain order of [us, the undersigned, *if so,*] two of Her Majesty's justices of the peace for the *county* of —, made on the — day of —, pursuant to section 14 of the "Industrial Schools Act, 1857," [we,] the said justices, ordered that you, the said *C. B.*, should weekly and every week pay to the managers of the said school the sum of — for the maintenance, clothing, education, care, and training of a certain child named *A. B.* (who is the son of [*or who had been residing with*] you, the said *C. B.*) and who had been theretofore duly sent to and was then and now is detained in the said certified industrial school for the period therein mentioned\*: Now therefore we, the said justices, seeing cause to diminish [*or increase*] the amount of the said weekly payment, do order, pursuant to section 15 of the said Act, that the said weekly payment to be made by you the said *C. B.* to you the said managers shall, from the — day of —, be the sum of — per week, and no more.

Given under our hands and seals this — day of —, at — in the *county* aforesaid.

[*Justices signatures and seals.*]

(K.)

*Order releasing Parent from Payment altogether.*

[*Proceed as in Form (I.) to the asterisk,\* and then say:*] Now therefore we, the said justices, seeing cause to release the said *C. B.* from the weekly payment altogether, do order, pursuant to section 15 of the said Act, that you, the said *C. B.*, shall be released altogether from the payment of the aforesaid weekly sum to the said managers from the — day of —.

Given under our hands and seals this — day of —, at — in the *county* aforesaid.

39. *Riots.*

We have already considered the powers of constables in ordinary cases of affray and breach of the peace. In the more serious instance



of what the law terms a "riot," he has also important duties to perform, in his character of conservator of the peace.

When three persons or more shall assemble themselves together with an intent mutually to assist one another against any one who shall oppose them in the execution of some enterprise of a private nature, with force or violence against the peace, or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful, and if they shall only meet to such a purpose or intent, although they shall after depart of their own accord without doing anything, this is an unlawful assembly.

If after such their first meeting, they shall move forward towards the execution of any such act, whether they put their intended purpose into execution or not, this according to the general opinion is a rout. And if they execute such their purpose in a riotous manner, then it is a riot.

By the common law, constables and other peace officers may and ought to use their best exertions to suppress a riot, and may to that end command all other persons to assist them. The Riot Act, 1 G. 1, st. 2, c. 5, contains some important provisions for the suppression of riots. The first section provides, that if twelve persons or more are "unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace," and being commanded by a justice, or the sheriff or under-sheriff, or the mayor, bailiff, or other head officer, by proclamation, as there directed, to disperse, but shall refuse and shall continue together rioting for one hour, such offenders shall be transported for life, or for any term not less than fifteen years, or imprisoned for any term not exceeding three years (a).

It is not necessary to constitute a riot that the proclamation should be read; but it must be made to render the continuance of the riot for one hour a capital offence.

The party authorized to make the proclamation shall go among the rioters, or as near thereto as he safely can, and shall with a loud voice command silence, and require the rioters to disperse, &c., in the exact form given by the Act, which must not be varied, otherwise an indictment for the capital offence will fail.

And by section 3, express power is given to high and petty constables, and other peace officers, and private persons (who are required to obey officers in their request to render assistance), "to seize and apprehend" the rioters continuing together after the proclamation made, and forthwith to carry them before a magistrate; and if the rioters make resistance, and happen to be killed, maimed, or hurt, the persons attempting to arrest them shall be indemnified.

Constables and other peace officers may lawfully apprehend rioters (as being engaged in the commission of a breach of the peace) even before the Act is read.

The form is as follows:—Our Sovereign Lord the King chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the Act, made in the

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(a) 7 W. 4 & 1 Vict. c. 91, s. 1.



fourth year of King George, for preventing tumults and riotous assemblies. God save the King.

A riot must be by three persons, and an affray is understood to be by two, but a forcible entry may be by one.

#### 40. *Servants.*

If any person shall offer him or herself as a servant, asserting or pretending that he or she hath served in any service in which such servant shall not have served; or if any person having before been in service, shall, when offering to hire him or herself as a servant in any service, falsely or wilfully pretend not to have been hired or retained in any previous service as a servant, such person, on conviction, before one or more justices, shall forfeit the sum of twenty pounds, half to the poor of the parish and half to the informer. See 32 G. 3, c. 56, s. 6; for non-payment of penalty to be committed for not less than one month, and not exceeding three months.

By the Annual Mutiny Act, should a servant (not being an apprentice) enlist as a soldier, the master is bound to pay such recruit a reasonable proportion of his wages, for the time he has actually served. A master may correct his apprentice, or his servant under age, viz. under sixteen years, provided he do so moderately and with a fit instrument (*a*). Servants misconducting themselves, or not fulfilling any contract they may have made with such master, such contract being in writing, and signed by the contracting parties, or having entered into such service, although there be no contract in writing, and absenting himself or herself from his or her service before the term of his or her contract shall be completed, or neglecting to fulfil the same, or being guilty of any other misconduct or misbehaviour, in proof of such on oath before one justice, such justice may issue his warrant for apprehending such servant; and if it shall appear to such justice that any such servant shall not have fulfilled such contract, or hath been guilty of any other misconduct or misdemeanor, such justice may commit every such servant to the house of correction, to be kept to hard labour for any time not exceeding three months, and to abate a proportional part of his or her wages, for and during such period as he or she shall be so confined in the house of correction, or in lieu thereof to punish the offender by abating the whole or any part of his or her wages, or to discharge such servant from his or her service (*b*).

This section applies only to labourers who have contracted to "serve," and not to those who contract to do a specific work, nor does the statute extend to specific servants.

By the statute 20 G. 2, c. 19, the jurisdiction of justices extends to cases where servants in husbandry have contracted with their masters, &c., for the period of one year. And the statute 31 G. 2, c. 2, extends the provisions of the above Act to any hiring for a less period than a year.

With respect to the general duties of a servant, the rule is, that a paid servant is bound to observe, with care and diligence, the interest

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(*a*) 6 Anne, c. 31.

(*b*) See 4 Geo. 4, c. 34, s. 3.



of his master, and to exercise the same vigilance and attention as the master himself would have done (*c*). The servant is bound to adhere to the reasonable orders of his master, and will be responsible for the consequences of refusal, or neglect to perform the same, though done with a view to the master's benefit (*d*). The law implies a contract on the part of the servant to obey the lawful commands of the master, and to work at all reasonable hours, when required, during the whole or any part of that year (*e*). A servant in husbandry, who usually breakfasted at five o'clock in the morning and dined about two o'clock, was ordered by his master to take a horse to the marsh, about a mile off, just as the dinner was ready, and upon his refusal to go till he had dined, was instantly discharged by his master; and one of the questions raised at the trial being as to the propriety of the dismissal, the judge, Lord Ellenborough, C. J., said, that if the servant persisted in refusing to obey his master's orders the latter was warranted in turning him away; that there was no contract between the parties except that which the law made for them; and it might be hard upon the servant, but that it would be exceedingly inconvenient if the servant were to be permitted to set himself up to control his master in his domestic regulations, such as the time of dinner; that, after a refusal on the part of the servant to perform his work, the master was not bound to keep him on as a burthensome and useless servant to the end of the year, and that the question really came to this, whether the master or the servant was to have the superior authority (*f*).

A servant hired in the general way has no right to call any portion of his time his own, but is bound to execute his master's commands at all reasonable times during the term of his hiring.

A servant clandestinely taking his master's corn to give to his master's horses is guilty of larceny, and this point having been so recently decided by a large majority of the twelve judges, the judge at trial would not again reserve the point (*g*).

A servant was sent with six shillings to buy twelve hundred weight of coals; he bought a smaller quantity, for which he paid three shillings and threepence, and appropriated one of the shillings to his own use: held a larceny (*h*).

It is highly necessary on the part of a master at the time of hiring a servant, to note down the particulars of such hiring or contract, and both master and servant to sign the same, with some person to witness the signature, &c.; for should a master contract with a servant, either in a market or other place, in the absence of such contract in writing, the servant cannot be compelled to enter such service; but if after entering into such service, or having contracted by writing and signed by both master and servant, such servant can be apprehended by warrant for not entering upon such service, according to the term of the contract.

(*c*) *Kilsby v. Williams*, 5 B. & A. 820.

(*d*) *Dyer*, 161, 4 Camp. 183.

(*e*) *Rex v. St. John, Devizes*, 4 M. & R. 681; 9 B. & C. 900.

(*f*) See *Spain v. Arnott*, 2 Stark. 256.

(*g*) *Reg. v. Handley*, 1 C. & M. 545.

(*h*) *Reg. v. Beaman*, 1 C. & M. 595.



A copy of the following form may be used by masters on hiring servants in husbandry, and must be signed by both parties :

Be it remembered, that on the — day of —, 1858, at —, I, *John Jones*, late of —, do hereby contract to serve *William Thomas*, of —, as a servant in husbandry, for the term of one year, now next following, for the wages of — pounds — shillings, for the said term of one year, and to enter into such service on the — day of —, 18—.

As witness our hands,

JOHN JONES, *Servant*.

WILLIAM THOMAS, *Master*.

And the following may be used in contracting with a man and his wife, commonly called a “hind” and his wife :

Be it remembered, that on the — day of 1858, at —, I, *John Jones*, do hereby contract with *William Thomas*, of —, to serve the said *William Thomas*, as servant in husbandry, for the term of one year, now next following, at the weekly wages of — shillings per week, for the said term, and also for my wife to serve the said *William Thomas*, as a servant in husbandry, for the same period, at the wages of — pence per day, when required to work by the said *William Thomas*, and both to enter into such service on the — day of —, 18—.

Witness our hands,

JOHN JONES, *Servant*.

MARY JONES, *Wife*.

WILLIAM THOMAS, *Master*.

Should the contract be, to find the hind and his wife with a house, potatoes, or coals, &c., the fact can easily be stated previous to the signature of the contracting parties.

Magistrates have no jurisdiction unless the servant be hired for a time certain, such as a month or a year. And therefore where A. and B. contracted with C. to cut ten acres of wheat, the magistrate had no jurisdiction, as the hiring to do specified work is not a hiring to serve, and therefore not within the Acts, 20 G. 2, c. 19; 4 G. 4, c. 34 (a). As, for instance, a master could have no control over persons contracting to do a specific piece of work relative to length of day, &c. But with regard to the time of persons contracting to serve, the master has and ought to have the sole control over his servants for the time.

It is also very doubtful whether journeymen masons, carpenters, &c., hired by the day, are within the above statutes (without considering that they are not persons *ejusdem generis* with any of the labourers mentioned in the statutes): there is no contract to serve, they being engaged to do a specific piece of work, just as a person employs a tradesman. Opinions have been given that they are not (b).

(a) *Lancaster v. Greaves*, 9 B. & C. 623; *Hardy v. Ryle*, 9 B. & C. 603.

(b) See *Reg. v. Johnson*, and *Johnson v. Reid*, 4 J. P. 265, 736.



Railway labourers are not within the statute, being hired to work at a specific piece of work, and not to serve generally.

So also, with Irish reapers contracting to cut a certain number of acres of corn, at so much per acre; no time is limited for the performance of the work, but they are hired to do a specific piece of work for a certain sum of money, and are clearly not within the statutes of 20 G. 2, c. 19, and 4 G. 4, c. 34, s. 3, and therefore may leave at their pleasure, for it would not be worth while to sue them. But, again, should they leave before completing the contract, they could have no claim for work already done (c). The Act only extends to cases where the relation of master and servant exclusively exists.

It is presumed, a journeyman shoemaker, who is paid so much per pair for making shoes, under a contract to make shoes at so much per pair, is not a contract to serve, so as to create the relationship of master and servant within these statutes.

Neither would a labourer, who engaged to cut, or mow, a field of grass at so much per acre, or for a sum certain, be within the said statutes, unless the contract was for a time certain, at so much wages, and during that time to be under the control and at the lawful will of his master. There must be such a contract existing between the master and servant, that the latter cannot work for any other person during such contract. A labourer, or other person, it is presumed, may contract to serve for a time certain, or during the whole harvest, to wit, and cut corn at so much per acre, in lieu of wages, and still be within the statute; for here, he would be exclusively the servant of his employer during the whole harvest, the hiring not being to reap *so many acres* at so much per acre, or it would have been otherwise. As A. taking a certain field of corn to cut for B. for a sum certain; this would not be a contract under the statutes.

But a collier hired to raise coal for so many weeks, at so much per ton, for every ton of coal he raises, would clearly be within the statutes (d); for here, too, the collier cannot legally serve another during such hiring and contract. The mode of payment does not signify, where the contract to serve is otherwise perfect in itself. If the hiring were merely to raise coal at so much a ton, without any reference to a fixed period of service, it would be otherwise. The employed must be under the exclusive control of the employer during a specific period. It must be confessed, the late decisions have nearly nullified the statute; and to say the least, unless the case come clearly under the statutes, it is not safe to act. A railway labourer is not a labourer within the statute, not being hired to serve generally, but to perform certain specific work. It was held in *Kitchen v. Shaw*, 6 A. & E. 729, that "other labourers" in the 20 G. 2, c. 19, s. 1, meant only such persons as had been before enumerated.

The contract and service should be such, as that the employer should not only have the sole control over the employed with regard to the kind of work to be done, but also with regard to the hours of employment, &c.

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(c) See J. P. vol. viii. 651. (d) 4 G. 4, c. 34, s. 3.



An infant entered into a contract in writing to serve a master, and no one else, for twelve months. The infant afterwards entered into the service under the contract. The contract authorized the master to stop the wages of the infant servant at any time when the master's steam-engine should stop working from any cause, but did not render the master liable to provide employment for the defendant or to pay him wages when unemployed. *Held*, that this agreement could not be for the benefit of the infant servant, and therefore was void; and that a conviction of the infant under the 4 G. 4, c. 34, s. 3, for absenting himself without leave, must be quashed (*a*). In giving judgment Lord Denman, C. J. said: "The case of the *Queen v. Lord* was that of a conviction of a servant for unlawfully absenting himself from his master's employ. The servant was an infant at the time of entering into the agreement. The agreement authorizes the master to stop his wages at any time when the steam-engine has stopped working for any cause, but contains no provision which renders the master liable to provide employment for the defendant, or pay him wages when unemployed. An agreement to work for wages may be for his benefit, but an agreement to compel him to serve at all times, leaving the master free to stop his wages at any time, cannot be so. It is inequitable and wholly void, and the conviction must be quashed."

The plaintiff agreed with T. P. in writing, among other things, that T. P. should for seven years serve the plaintiff and his partner or partners for the time being, or such of them as should carry on the trade of a glass and alkali manufacturer, then carried on by the plaintiff; that T. P. should not absent himself from such service without the licence of such persons so carrying on the business, nor serve other persons during the term; that the plaintiff should, during the time T. P. continued employed, pay him 24s. per week for 1200 tables, and at other rates for extra tables; and when tables were not wanted should find him other work, so that he should not earn less than 24s. per week, except when a furnace was out, when he should have 21s. per week; and in case that T. P. should become incapacitated to perform, or should fail to perform such work, or if the plaintiff or his partner should discontinue the business during the seven years, then that they should be at liberty to employ other persons, and should not be bound to pay anything to T. P. *Held*, that this agreement was bad, either for want of mutuality or as being in restraint of trade (*b*).

The discharge of a servant by a magistrate under the 4 G. 4, c. 34, s. 3, on the complaint of the master, is in law a discharge by the master. Such a discharge is made without jurisdiction, unless the servant have been guilty of non-fulfilment of the contract or of misconduct. A declaration contained three counts; one for breach, by a wrongful discharge without notice, of a special contract by the defendant to employ the plaintiff as a servant in husbandry until the service should be determined by due and reasonable notice, one for

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(*a*) *R. v. Lord*, 12 J. P. 759.

(*b*) *Hartley v. Cummings*, 17 L. J. C. P. 84.



work and labour, and one on an account stated. *Held*, that the first count was not proved by evidence of a general hiring as an agricultural labourer; and that proof of discharge for misconduct before the end of the year disentitled the plaintiff from recovering anything on any of the counts of the declaration (b).

It was held in *R. v. Ellen Griffith*, 8 J. P. 326, that a dairy-maid is not within the Acts. The author respectfully submits that some mistake arises in the reporting of this case. *Griffith* must have been partly dairy-maid and partly a domestic servant; if so, she certainly would not come under the Acts; but if she were dairy-maid and servant in husbandry, or if she were dairy-maid only, she must be a servant in husbandry within the meaning of the statutes. [The report in fact only states that a rule *nisi* for a *habeas corpus* was granted on that, along with other grounds.]

The statutes do not extend to any case where work is done under a contract for a sum certain, or where the hours of work are entirely left in the discretion of the contracting party; and, therefore, where A. had contracted with B. to build a wall for a certain price, within a certain time, and having performed a part of the work, refused to complete it; this was held not to be within the 4 G. 4, c. 34, s. 3 (c).

By the statute 20 G. 2, c. 19, application may be made to a justice by the master, mistress, or employer; but by the 6 G. 3, c. 25, the complaint must be made by the person with whom the labourer contracted, or by his steward or agent. No appeal lies to the sessions under the 6 G. 3, c. 25.

B. (a collier), was sentenced for three months for absenting himself from his master's service (d). Lord Ellenborough C. J., there said:—"It is not for us to say whether it may be convenient and proper to provide a remedy by appeal for a party aggrieved by a commitment in execution under this Act; we can only declare what the legislature have said in this case, and when by accepting an order of commitment out of the appeal clause, they have said that there shall be no appeal against such an order, and when the commitment must for this purpose be taken to be one and the same thing with the conviction, we have no discretion left to exercise upon the subject; and it does not become us to scan the wisdom of the provision which the legislature have enacted."

The conviction and commitment must show that the complaint was on oath, and also must set out that the examination was also on oath, and must also show the nature of the employment of the servant, as well as that he was employed (e).

The commitment as well as the conviction must show either that the contract was entered into, or the work refused to be done, or the servant found within the jurisdiction of the magistrate (f). Proceedings under the 6 G. 3, are rarely ever taken. The 4 G. 4, c. 34, gives

(b) *Lilly v. Elryn*, 12 J. P. 343.

(c) *Lancaster v. Greaves*, 9 B. & C. 628.

(d) *R. v. The Justices of Staffordshire*, 12 East, 572.

(e) *R. v. Lewis*, 13 *Law Journal*, N. S., M. C. 46.

(f) *Johnson v. Reid*, 6 Mee. & W. 124.



justices more extensive jurisdiction, and gives justices power to commit to prison, or abate wages of servants, or to discharge such servant: but the former Act does not authorize the discharge of the servant; and by section 5 of the 4 G. 4, c. 34, the order of the magistrate is final and conclusive, where it is made for the payment in a certain time of the amount of the wages that appear to be due, but it seems not so for any other purpose (*g*). By the 4 G. 4, c. 34, s. 5. the amount of wages in question must not exceed 10*l.* with regard to any servant, nor 5*l.* with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer. The 4 G. 4, c. 34, is also extended by the 10 G. 4, c. 52, and which is in *pari materiâ* with that Act, to the servants named in the 17 G. 3, c. 56. The 17 G. 3, c. 56, also names persons employed in the woollen, linen, cotton, flax, mohair, and silk trades; but as to these the Act is repealed by the 6 & 7 Vict. c. 40.

In *Dalt.* c. 58, p. 141, *Com. Dig., Justices B.* 63, it is said, that if a servant, *id est*, a labourer, &c. of his own accord shall depart from his master before his time expire, he shall lose all his wages. But if he depart with the consent of his master, he shall have his wages for the time he served.

If a magistrate discharge a servant for misconduct on the part of the servant, no order can be made for payment of wages, though an order for abatement may be made, where any wages are due and claimable. The 20 G. 2, c. 19, s. 1, seems to be in aid of a proceeding for wages only, and not for misconduct: so is 4 G. 4, c. 38, s. 4. The 2nd section of the 20 G. 2, c. 19, and the 3rd section of 4 G. 4, c. 34, do not allow an order for payment of wages (*h*).

By mutual consent the contract may be, of course, put an end to any time. By the death of the master the contract is dissolved.

A servant embezzling his master's property is good ground for dismissal (*i*). The being absent when wanted, sleeping from home at night repeatedly without the master's leave, &c., is a sufficient cause for dismissal (*k*). A servant who betrays the secrets of his master may be discharged (*l*). In *R. v. Brampton, Cald.* 11, the principal question was, whether a maid servant hired for a year, could be discharged by her master three weeks before the end of the year (she being with child), by his own authority, without the intervention of a magistrate, so as to prevent her gaining a settlement. Lord Mansfield, C. J., said, "The question is, has the master done right or wrong in discharging his servant for this cause? I think he did not do wrong. Shall the master be bound to keep her in his house? To do so would be *contra bonos mores*; and, in a family where there are any young persons, both scandalous and dangerous."

(*g*) *Ch. Burn's*, vol. v. p. 874, 1845.

(*h*) See *J. P. No.* 18, vol. x. p. 287.

(*i*) *Brown v. Croft*, *Chit. Gen. Practice*. 81.

(*k*) *Robinson v. Hindman*, 3 *Esp.* 235.

(*l*) Per Best, C. J., in *Beeston v. Collier*, 2 C. & P. 609.



So a man servant may be discharged for criminal intimacy with the female servant in the house (*m*).

A servant marrying is no reasonable cause for discharge. If a woman, who is a servant, marry, she must serve her time out, and her husband cannot take her away from her master's service (*n*). It is always better, "even when the offence of the servant permits the discharging of the servant," to apply to a magistrate. Lord Mansfield says: "No person can be judge in his own cause."

As has been already noticed, it is better to contract for the service in writing. A party entered into the service of another under the following contract: "I hereby agree to enter into your service as a weekly manager, to commence from next Monday. The amount of payment I am to receive I leave entirely to you." It was held, per Alderson, B., and Maule, B., *dissentiente* Parke, B., that he was entitled to recover a reasonable remuneration for his services (*o*).

A servant incapacitated from actual service during part of the time of his hiring by sickness, is still entitled to wages during that period, provided such sickness, hurt, or disabling be by the act of God, or by doing his master's business (*p*). But a master is not bound to provide a servant with medical attendance and medicines during sickness: though if a servant fall sick, and the master call in his own doctor to attend such servant, the master will be liable, and cannot deduct the doctor's bill from the servant's wages (*q*).

If a servant shall depart out of his master's service before the term of his contract, such master may apply to a justice, in case the justice has jurisdiction, or he may have an action against him (*r*).

A. having discharged his servant, and having heard that he was about to be hired by B., wrote a letter to B., stating he had dismissed him for misconduct. B. in answer, desired further communication. A. then wrote a second letter to B., stating the grounds of dismissal. In an action by the servant against A. for a libel contained in this letter, it was held, that assuming the letter to be a privileged communication, it was properly left to the jury to consider whether the second letter was written by A. *bonâ fide*, acting under a belief that he was discharging a duty which he owed to the party who was about to take the plaintiff into his service, or with an intention to injure the servant (*s*).

In an action on the case, the declaration stated that the plaintiff's wife, having been retained by the defendant as a servant, was dismissed from the said service; that after she was so dismissed, she had applied to a person of the name of *Stewart*, for the purpose of being retained and hired as a servant; that Mrs. Stewart was ready and willing to have hired and taken her into her service, if the de-

(*m*) *R. v. Brampton, R. v. Walford*.  
Cald. 57.

(*n*) Dalt. c. 58.

(*o*) *Bryant v. Flight*, 5 Mee. & W.

(*p*) Dalt. c. 68, p. 141. *Chandler v.*  
*Grieves*, 2 H. Bla. 606.

(*q*) *Newby v. Wiltshire*, 2 Esp. 739;  
*Reg. v. Smith*, 8 C. & P. 153.

(*r*) Dalt. c. 121, 281, 282.

(*s*) *Pattison v. Jones*, 3 Man. & R.  
101.



fendant would have given her a character and such character was satisfactory; that it was the duty of the defendant by law to have given her such character as she deserved, and then assigned a breach, that the defendant not regarding such her duty wholly refused to give her any character whatever; by reason whereof the said Mrs. Stewart refused to hire her into her said service; plea of not guilty. On opening the pleadings, Lord Kenyon, C. J., addressing himself to the plaintiff's counsel, said: "Can you make anything of this action? I have read an abstract of the record: it is impossible to support the action." Upon the plaintiff's counsel replying that he had no case, his lordship proceeded to observe: "There is no case; there is no foundation in law for this action, what one's real feelings would dictate is one thing; but can you say that there is a legal obligation on one to give a servant a character at all? You are indeed, to take care, if you do give a character, to give a true one; but you are not bound to give a character at all. I am confident that this action cannot be maintained (*t*). And when a master gives a bad character of a servant, the latter cannot maintain an action against the former, unless the account given be malicious as well as false: express malice must be proved (*u*). The action will not lie, even though the master make specific charges of fraud (*v*). To prove such express malice evidence that the character given is false, is admissible (*w*). If a servant brings into a service a written character, and is afterwards dismissed for ill behaviour, it seems that the master does no wrong, if before he returns the character to the servant, he writes upon it, that the person was afterwards in his service and dismissed for ill behaviour (*x*).

It is competent to a master who has given a character to a servant to make in good faith at another time any statement which he may think necessary for communicating full information to the person who has inquired for the character (*y*).

A gamekeeper guilty of disobedience, may be discharged as other servants; and his residence in a house by permission of the lord of the manor is lawful only, while he is gamekeeper (*z*).

*Turner v. Mason*, (*Court of Exchequer; Tuesday, May 11, 1845*), which was an action by a female servant, for a dismissal without a month's warning or a month's wages, the defendant pleaded that he had refused to allow the plaintiff, at her request, to leave and stay out of his house for a night; that, notwithstanding such refusal, and in disobedience of his orders, the plaintiff left his house and remained away all night, and that for this reason he had dismissed her from

(*t*) *Carrol v. Bird*, *Sittings at Westminster* after T. T., 40 G. 3; 3 Esp. 201, S. C. And see *Ashover v. Brampton*, *Cald.* 11, *ante*; Ch. Gen. Prac. 78.

(*u*) B. N. P. 8; per Lord Mansfield, in *Hargreave v. Le Breton*, 4 Burr. 2425.

(*v*) *Weatherstone v. Hawkins*, 1 T. R. 110.

(*w*) *Rogers v. Clifton*, 3 B & P. 587; *King v. Waring*, 5 Esp. 13.

(*x*) *Taylor v. Rowan*, 7 C. & P. 70.

(*y*) *Gardner v. Slade*, 18 L. J. Q. B., 334.

(*z*) *Litt. R.* 139; 16 East, 33.



his service, without warning, as he lawfully might do. To this there was a replication, alleging that the plaintiff had asked permission to leave her master's house for the purpose of seeing her mother, who was at the point of death; that the defendant refused such permission, and that the plaintiff thereupon, and for no other reason, left the defendant's house, and remained away for one night, as alleged in the plea. There was a demurrer to the replication.

Mr. Gray appeared to support the demurrer, and Mr. Badeley to show cause against it. The latter was first called upon by the court, and submitted that the plea did not disclose a reasonable ground for breaking the contract. A servant was not bound to do all her master might order, otherwise it would be a contract of slavery, and not a contract of servitude. Then there was a moral and religious obligation on the plaintiff to attend the dying bed of her mother, and the performance of that duty did not entitle the defendant to dismiss her without warning.

Mr. Baron Alderson: Suppose a man's cook refuse to cook a dinner on a Sunday, would the master be justified in dismissing her for disobedience? Mr. Badeley submitted that he would not, nor yet if a master refused to allow his servant to attend to her religious devotions.

The court, without calling on the opposite counsel, were unanimously of opinion that the replication was bad, and the plea well pleaded. The contract of a servant was to obey the lawful orders of her master, and the plea disclosed an instance of wilful disobedience to an express order. It was the master's province to regulate the conduct of his domestic servants, and it would lead to dangerous consequences to say that moral obligations should supersede the legal rights of the parties. It might have been very unkind of the master to refuse permission to the plaintiff to see her mother in a dying state, but the court could not say the command of the master was illegal, or justified wilful disobedience; and, indeed, it did not appear from the replication that the master was told why the plaintiff wanted to remain away all night, or that it was necessary.—Judgment for the defendant.

An apprentice was committed for running away from his master. The commitment described him as an apprentice *or* servant, and stated he had disobeyed his indentures *or* articles. Lord Mansfield held the commitment bad, for the uncertainty thereof (*a*). It ought not in any material part to be in the disjunctive (*b*).

A commitment under 4 G. 4, c. 34, s. 2, stating that the defendant, a minor, had contracted to serve *A. B.*, but omitting to state, "in the employment of a miner;" held bad.

A commitment under that statute, alleging a complaint of the master on oath, and then reciting that the magistrate had duly examined the proofs and allegations of both the parties touching

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(*a*) And see *R. v. Sadler*, 2 Chit. Rep. 519.      (*b*) *R. v. Evered*, Cald. 26.



the matter of the complaint, and adjudging it to be true: held bad, for want of an averment that the latter examination was on oath (c) In this case Williams, J., said: "I cannot read this in a manner different from that which I should adopt in reading any other composition, and I am not to resort to any violent intendment to support it. The statute requires the complaint to be upon oath, and then, in a substantive distinct part, empowers the justice to examine into the matter. At that hearing something might occur to excuse the party, and it is quite clear that it therefore ought to be upon oath. The commitment is consequently defective."—Prisoner discharged.

In the case of *Isaac Tordoff*, April 30, 1844, under a commitment, stat. 4, G. 4, c. 34, Lord Denman, C. J., said: "Where an Act of Parliament gives a magistrate a power of commitment without a previous conviction, it should appear on the face of the warrant of commitment that the charge was heard and the evidence taken in the presence of the prisoner."

The court will not intend a good conviction to support a bad commitment (d).

In the case of *Edwin Copestick*, under a commitment, stat. 4 G. 4, c. 34, s. 2, it was held not sufficient to state that the party committed was the servant of *A. B.*, without showing the nature of the employment (e).

In the case of *R. v. John Gray*, a collier, reported in the *J. P.*, vol. viii. p. 804, Nov. 9, 1844, Patteson, J., said, "You may call this commitment what you like, but it is in fact a conviction, and a conviction too under a highly penal statute. It is therefore quite clear, upon the authority of *R. v. Tordoff*, and *R. v. Lewis*, that it ought to appear that the evidence was taken before the prisoner upon oath: *R. v. Lewis* is directly in point; and as this requisite to the validity of the conviction does not appear here, the prisoner must be discharged."

The 4 G. 4, c. 34, Masters and Servants Act, contemplates no other instrument than a warrant or order of commitment by the magistrate before whom the information and complaint are made. That instrument must therefore be good on the face of it, in order to justify the magistrate, who cannot support any defects in it by a proper and formal conviction subsequently drawn up and filed at the sessions. The warrant of commitment must therefore show that the contract alleged to have been broken was in writing, or that the servant entered into the service under it, one of which two circumstances is necessary in order to give the justice of the peace jurisdiction to commit to hard labour; and it is not sufficient merely to adjudge that the servant absented himself from his service before the term of his contract with his master was completed, contrary to the form of the statute in that case made. A servant having been so committed to prison on such an insufficient warrant, was afterwards

(c) *R. v. Lewis*, 13 L. J., N. S., M. C., p. 46.

(d) 13 L. J., N. S., M. C., 145.

(e) 13 L. J., N. S., M. C., 161.



discharged on *habeas corpus*, and the committing justice of the peace drew up and filed a formal conviction. *Semble*, that such conviction could not be connected with the warrant of commitment, and that if it could be so used under ordinary circumstances, it was filed too late, and was in the same condition by reason of the servant's discharge on *habeas corpus*, as if it had been filed after a previous conviction quashed (*f*). In giving judgment, Parke, B., said: "This case came before us on a bill of exceptions tendered to the direction of my brother Coltman, on the trial of an action of trespass for assault and false imprisonment, brought by the plaintiff below against the then defendant. It appeared that the plaintiff below had been committed to the house of correction at Kirkdale, in Lancashire, by a warrant under the hand and seal of the defendant, a justice of the peace for the county. (His lordship here read the warrant and then proceeded.) Under this warrant the plaintiff below was kept in prison until he was discharged on *habeas corpus* by my brother Wightman. On the part of the defendant a conviction on parchment under his hand and seal was put in, the same having been drawn up confessedly after the discharge of the plaintiff. This conviction purported to be on information upon oath of one Adam Gregory, underlooker and manager of James Whaley, Frederick Lewis Gerard, and John Deakin, having and carrying on a colliery at Ince; and stating that the plaintiff below had contracted to serve the said parties, and having entered into their service, had absented himself from the said service before the term of his said contract was completed. The conviction then proceeds to set out the evidence, and to adjudicate upon the matter in due form. Adam Gregory was likewise examined as a witness at the trial, and deposed that he was underlooker and manager, and agent of Whaley, Gerard, and Deakin; that as such he hired the plaintiff, who entered on the service and absented himself without lawful excuse. He also proved that he went before the magistrates, and deposed upon oath to all the circumstances before mentioned relative to the plaintiff, and to his contract and absence from the colliery, and exhibited his information in writing, which was produced and read at the trial, and which only states him to be underlooker of the said colliery. This was the evidence before the learned judge; and my brother Coltman, in summing up, directed the jury, that if they believed it, they ought to find a verdict for the plaintiff. To this direction the counsel for the defendant below objected; the plaintiff obtained a verdict, and the only question now is whether that direction was right, and we are of opinion that it was. The case was elaborately argued before us after Easter term last, and several important questions then discussed; but it is not necessary to give any opinion on them, for we think that the warrant of commitment is bad upon grounds irrespective of those questions. Mr. Addison argued, and we think correctly, that under the statute under which the commitment took place, 4 G. 4, c. 34, the commitment to hard

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(*f*) *Lindsey v. Leigh*, 12 J. P., 151.



labour under the 6 G. 3, c. 25, cannot be supported; that the legislature did not intend that there should be any other instrument to authorize the detention of the party than the warrant or order to commit, founded on the proper information on oath by the master or his agent; that no conviction, properly so called, was required or authorized to be filed at the sessions of the justices of the peace; and that if the warrant of commitment was defective, the commitment was unlawful, and could not be rendered legal by connecting it with a formal conviction. This is a question on the construction of the particular Act of Parliament under which the commitment took place. It is just as competent to the legislature to authorize a justice of the peace to exercise a summary jurisdiction out of the course of the common law by a simple order, which shall be delivered to the person who is to execute it, and which shall be his authority for so doing, as it is to authorize him to proceed by a summons and a conviction to be filed at the sessions, and a commitment thereon, though the latter alone is by far the more usual course. The 6 G. 3, c. 25, is a statute *in pari materia*: and a reference to it, and to the case of *Rex v. The Justices of the Peace of Staffordshire*, 12 East, 572, which treats such an instrument as an order of commitment only, and not a conviction, strongly confirms this view of the case: and the context in 4 G. 4, c. 34, shows that in dealing with cases brought before them by a complaint of the master or manager, as in the abatement of wages, an order is all that would be required. But by whatever name this commitment is called, we think it clear that it is the only instrument which the legislature intended to exist. In this case this instrument must necessarily be in the custody of the keeper of the gaol, and no mention is made expressly or impliedly of any other instrument; still less of any formal record which is to be returned as filed at the sessions, and become one of its records, as a conviction does. In *Johnson v. Reid*, 6 M. & W. 128, I expressed an opinion that no conviction was necessary under this statute, and to that opinion I adhere; but whether this be an order, as indeed we think it is, or be an instrument in the nature of a conviction, it being, as it seems to us, to be the only document the existence of which was contemplated by the legislature, the legality of the imprisonment depends on the legality and sufficiency of that instrument alone. Whether this instrument is to be construed with less degree of strictness, as being an order, according to the doctrine laid down in *R. v. Lloyd*, 2 Str. 996, or with a greater degree of strictness as being a conviction, as the court of Queen's Bench has intimated in *In re Hammond*, 2 New Sess. Cas. 397, we think it bad. Every instrument which is to affect a man's liberty or property, ought, on the face of it, to show the authority sufficiently, and we think this does not. We do not consider it necessary to say whether the objection is well founded, which appears to have prevailed in the case *In re Turner*, 2 New Sess. Cas. 433, to a similar warrant, namely, that it does not state that the plaintiff had absented himself without lawful excuse: because we think that the commitment is invalid, as it does not bring the case within the statute 4 G. 4, c. 34, by the averment that the contract to serve



was in writing, or that the service was entered upon, one of those two circumstances being essential to give magistrates jurisdiction to commit to hard labour. For this reason we are of opinion that this warrant of commitment did not afford a jurisdiction to the defendant below, and this view of the case makes it unnecessary for us to decide whether the conviction could be connected with the commitment, looking at the peculiar framing of it, and supposing that it was competent to the justice of the peace under this statute to support his warrant by a proper conviction filed at the sessions. Neither is it necessary to decide whether this conviction be bad on the face of it; nor whether supposing it to have been otherwise unobjectionable, it was filed too late, or was in the same condition by reason of the plaintiff's prior discharge as if it had been filed after a former conviction quashed. These various points were fully argued; but in the view we have taken of this case they are immaterial; and being satisfied that the power of imprisoning the plaintiff below, and keeping him to hard labour, depends wholly on the validity of the warrant of commitment, as being the only instrument contemplated by the legislature, we think that the direction was correct; and that, therefore, it ought to be affirmed."

By the 20 G. 2, c. 10, and 4 G. 4, c. 34, to give the justice jurisdiction, the wages in question must not exceed ten pounds with regard to any servant, nor five pounds with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer; and the conviction and committal should be made before the same magistrate before whom the information and complaint were made; and the proceedings must be by warrant and not by summons.

By stat. 5 & 6 Vict. c. 99, ss. 10, 11, 12, proprietors of mines and collieries are not to pay wages at public-houses, beer-houses, or other houses of entertainment, under a penalty of ten pounds, and are also liable for repayment of such wages. One half of the penalty to the informer, and the other half to the overseers of the poor, to be applied for the relief of the poor of the parish, township, or place, where the offence shall have been committed.

The following artificers, labourers, and manufacturers, are by the 1 & 2 W. 4, c. 37, to be paid their wages in the current coin of the realm, and not by the delivering to him or them of goods, or by way of truck: penalty for the first offence, by sect. 9 of the said statute, not more than ten pounds, nor less than five pounds; second offence, not more than twenty pounds, nor less than ten pounds; third offence to be deemed guilty of a misdemeanor, and may be fined one hundred pounds, at the discretion of the court. Proceedings by the 20th section to be commenced within three calendar months after the offence committed; the awarding of the penalty at the discretion of the court or justices imposing the same, providing the sum awarded to the informer do not exceed twenty pounds. By sect. 19 the following and no other trades, occupations, and manufactures, are within the statute, that is to say, in or about the making, casting, converting, or manufacturing of *iron* or *steel*, or any parts, branches or processes thereof, or in or about the working or getting of any



mines of *coal, ironstone, limestone, salt rock*; or in or about the working or getting of *stone, slate, or clay*; or in the making or preparing of *salt, bricks, tiles, or quarries*; or in or about the making or manufacturing of any kinds of *nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges*, or any other articles or hardwares made of iron or steel, or of iron and steel combined; or of any plated articles of *cutlery*; or of any goods or wares made of *brass, tin, lead, pewter, or other metal*; or of any *japanned goods* or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any kinds of *woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair*, or silk manufactures, whatsoever; or in or about the making, or ornamenting, or finishing of any *glass, porcelain, china, or earthenware* whatsoever; or in or about the making or preparing of *bone, thread, silk, or cotton lace*, or of *lace* made of any mixed materials.

By sect. 20, nothing herein contained shall extend to any domestic servant, or servant in husbandry.

A. being a contractor on a line of railway, made a sub-contract for a portion of his works with B., who employed men under him, and worked himself. Some of his men were paid by tickets for goods given by A. to them in the name of B., but the shop belonged to A. *Held*, in an action by B. against A., that A. might set off the value of the goods so supplied; and that the Truck Act 1 & 2 Will. 4, c. 37, did not apply to the case of a sub-contractor, but only to the cases of men who were really labourers, and agreed to do works which were to be executed by their own manual labour. By agreement between A. & B. all the clay which was suitable for bricks was carted by B.'s men to a field in the occupation of A., where bricks were made. *Query*, whether this was a "getting of clay," within the Act (a).

#### 41. *Soldiers.*

*Desertion*, 398.

*Billeting soldiers*, 400.

*Royal marines*, 402.

*Desertion.*] Any constable may apprehend a deserter, and take him before any justice of the county, or any adjoining county in which he was apprehended, and if proved to the satisfaction of such justice that such person is a deserter, he may be committed to the common gaol, in order to his being taken to the head quarters or depot of his regiment, and such justice shall send to the secretary at war a report of the names of the persons by whom such deserter was apprehended, and the secretary at war shall transmit to such justice an order for any sum not exceeding forty shillings, and for the whole of the clerk's fees two shillings and no more. And every gaoler into

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(a) *Riley v. Warden*, 12 J. P. 614.



whose custody any person charged with desertion is committed, shall immediately notify the fact to the secretary at war, and transmit also a copy of the commitment (a).

The following is a copy of the form required to be returned to the secretary at war.

*Description.*—Return of A. B., committed to confinement at G. B., on the — day of —, 185—, as a deserter from the — regiment of —.

|                                                                                                      |                    |
|------------------------------------------------------------------------------------------------------|--------------------|
| Age .....                                                                                            |                    |
| Height.....                                                                                          | Feet.      Inches. |
| Complexion .....                                                                                     |                    |
| Hair.....                                                                                            |                    |
| Eyes.....                                                                                            |                    |
| Marks .....                                                                                          |                    |
| Probable Date of Enlistment, and<br>where .....                                                      |                    |
| Probable Date of Desertion, and<br>from what place .....                                             |                    |
| Name and Occupation and Ad-<br>dress of the Person by whom<br>apprehended .....                      |                    |
| Particulars of the Evidence on<br>which the Prisoner is com-<br>mitted .....                         |                    |
| Whether the prisoner was appre-<br>hended, or voluntarily surren-<br>dered himself as a Deserter ... |                    |
| Whether the Prisoner confessed<br>before a magistrate that he is<br>a Deserter .....                 |                    |

\* It is important for the public service, and for the interest of the deserter, that this part of the return should be accurately filled up, and the details should be inserted by the magistrate, or his clerk under his direction.

(a) See 7 & 8 Vict. c. 9, s. 22.



I do hereby certify that the prisoner has been duly examined before me as to the circumstance herein stated, and has declared in my presence that he "is" or "is not" (as the case may be) a deserter from the above mentioned corps.

J. H., magistrate, resident at W.

W. J., prisoner's signature.

R. L. S., informant.

In an action of trespass against a military officer having command of a military prison for imprisoning the plaintiff, the defendant pleaded not guilty by statute, and at the trial set up, under the 20th article of war, that it was his duty to receive and keep any prisoner committed to his charge by any officer or non-commissioned officer, who should at the same time deliver an account in writing, signed by himself, of the crime with which the prisoner was charged, and that the plaintiff had been so committed to his authority on a charge of desertion—*Held, first*, that the 20th article of war applies only to a person who, under the Mutiny Act, either is or is to be deemed to be a soldier. *Secondly*, that authority to make a valid enlistment may be presumed in case of a person employed in the recruiting service, without evidence that such person is an attested soldier. *Thirdly*, that if a person receives the enlistment money, knowing it to be such, from a person employed in the recruiting service, he is a soldier for the purpose of punishment for desertion, even though he have not been attested. *Fourthly*, that the legality of enlistment does not depend upon the putting to the recruit the questions prescribed by the 55th section of the Mutiny Act, but on the reception by him of enlistment money, knowing it to be such. *Fifthly*, that a soldier employed in the recruiting service who enlists a recruit on a Sunday, is not a person following his ordinary calling within the Lord's Day Act. *Sixthly*, per Lord Campbell, C. J., Coleridge, J., and Wightman, J., that the defendant was not deprived of the benefit of the 20th article of war by reason of the plaintiff not having been carried before a justice of the peace, and committed by him, before being taken to the defendant as commanding officer of the guard; but, per Erle, J., that a recruit deserting before he has joined his regiment cannot be lawfully constituted a prisoner under the 20th article of war, without the authority of a civil magistrate, and therefore that the defendant's defence under the 20th article of war failed (*b*).

*Billeting Soldiers.*] By stat. 19 & 20 Vict. c. 10, s. 69 (*c*), it shall be lawful for all constables of parishes and places, and other persons specified in this Act, in England and Ireland, and they are hereby required, to billet the officers and soldiers in Her Majesty's service, and out-pensioners when assembled as a local force by competent authority, and persons receiving pay in Her Majesty's army, and the horses belonging to Her Majesty's cavalry, and also all staff and field officers' horses, and all bāt and baggage horses belonging to any of Her Majesty's other forces, when on actual service, not exceeding for each

(*b*) *Walton v. Gavin*, 14 J. P. 722.

(*c*) The Mutiny Act, 1856.



officer the number for which forage is or shall be allowed by Her Majesty's regulations, in victualing houses and other houses specified in this Act (taking care in Ireland not to billet less than two men in one house, except only in case of billeting cavalry as specially provided); and they shall be received by the occupier of such houses in which they are so allowed to be billeted, and be furnished by such victuallers with proper accommodation in such houses, or if any victualler shall not have sufficient accommodation in the house upon which a soldier is billeted, then in some good and sufficient quarters to be provided by such victualler in the immediate neighbourhood, and in England with diet and small beer, and with stables, hay, and straw for such horses as aforesaid, paying and allowing for the same the several rates hereinafter provided; and at no time when troops are on a march shall any of them, whether infantry or cavalry, be billeted above one mile from the place mentioned in the route: and in all places where cavalry shall be billeted in pursuance of this Act, the men and their horses shall be billeted in one and the same house, except in case of necessity; and in no other case whatsoever shall there be less than one man billeted where there shall be one or two horses, nor less than two men where there shall be four horses, and so in proportion for a greater number: and in no case shall a man and his horse be billeted at a greater distance from each other than one hundred yards; and the constables are hereby required to billet all soldiers and their horses on their march in a just and equal proportion upon the keepers of all houses within one mile of the place mentioned in the route, although some of such houses may be in the adjoining county, in like manner in every respect as if such houses were locally situate within such place; provided that nothing herein contained shall be construed to extend to authorize any constable to billet soldiers out of the county to which such constable belongs when the constable of the adjoining county shall be present and undertake to billet the due proportion of men in such adjoining county; and no more billets shall at any time be ordered than there are effective soldiers and horses present to be billeted; all which billets, when made out by such constables, shall be delivered into the hands of the commanding officer present; and if any person shall find himself aggrieved by having an undue proportion of soldiers billeted in his house, and shall prefer his complaint, if against a constable or other person not being a justice, to one or more justices, and if against a justice then to two or more justices within whose jurisdiction such soldiers are billeted, such justices respectively shall have power to order such of the soldiers to be removed, and to be billeted upon other persons, as they shall see cause; and when any of Her Majesty's cavalry or any horses as aforesaid shall be billeted upon the occupiers of houses in which officers or soldiers may be quartered by virtue of this Act who shall have no stables, then and in such case, upon the written requisition of the commanding officer of the regiment, troop, or detachment, the constable is hereby required to billet the men and their horses, or horses only, upon some other person or persons who have stables by this Act liable to have officers and soldiers billeted upon them; and upon complaints being made by the person or persons to whose house or stables the said men and horses shall have



been so removed to two or more justices within whose jurisdiction such men or horses shall be so billeted, it shall be lawful for such justices to order a proper allowance to be paid by the person relieved to the persons receiving such men and horses or to be applied in furnishing the requisite accommodation; and commanding officers may exchange any man or horse billeted in any place, with another man or horse billeted in the same place for the benefit of the service, provided the number of men and horses do not exceed the number at that time billeted on such houses; and the constables are hereby required to billet such men and horses so exchanged accordingly; and it shall be lawful for any justice, at the request of any officer or non-commissioned officer commanding any soldiers requiring billets, to extend any routes or enlarge the districts within which billets shall be required, in such manner as shall appear to be most convenient to the troops; provided that, to prevent or punish all abuses in billeting soldiers, it shall be lawful for any justice within his jurisdiction, by warrant or order under his hand, to require any constable to give him an account in writing of the number of officers and soldiers who shall be quartered by such constables, together with the names of the persons upon whom such officers and soldiers are billeted, stating the street or place where such persons dwell, and the sign, if any, belonging to those houses; and it shall be lawful for constables to billet officers and soldiers in Scotland according to the provisions of the laws in force in Scotland at the time of its union with England; and no officer shall be obliged to pay for his lodging where he shall be regularly billeted, except in the suburbs of Edinburgh: provided that no officer or soldier shall be billeted in England in any private houses, or in any canteen held or occupied under the authority of the war department, or upon persons who keep taverns only, being vintners of the city of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding such persons who keep such taverns only have taken out victualling licences, nor in the houses of any distiller kept for distilling brandy and strong waters, nor in the house of any storekeeper whose principal dealing shall be more in other goods and merchandize than in brandy and strong waters, so as such distillers and shopkeepers do not permit tippling in such houses, nor in the house of residence in any part of the United Kingdom of any foreign consul duly accredited as such.

*Royal Marines.*] 19 & 20 Vict. c. 8, s. 38. Every marine convicted of desertion or of felony to be marked, if the court think fit, on the left side, two inches below the arm-pit, with the letter D, not less than one inch long, with ink or gunpowder, or other preparation, so as to be visible and not liable to be obliterated.

By s. 50, deserters from the Royal Marines to be treated similar to soldiers, as is already stated, except that notice must be given to the secretary of the Admiralty in a similar form, and the reward to the constable apprehending is twenty shillings, and justices' clerk's fees are the same.

The Mutiny Acts are annual.



## 42. Sunday.

No tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings, upon the Lord's day, or any part thereof, works of necessity and charity excepted; and every person, being of the age of fourteen years or upwards, offending as above, shall for every such offence forfeit the sum of five shillings (*b*).

By the 29 Car. 2, c. 7, s. 2, the 5*s.* for Sunday trading shall be levied by distress upon the goods of the offender, and in default of distress "the offender shall be set publicly in the stocks for two hours:" *Held*, that setting in the stocks is a punishment substituted for the penalty, and therefore that a conviction which adjudged the offender to be set in the stocks for two hours, unless he paid the penalty and costs, and the costs of the distress, was bad, and not warranted by the 11 & 12 Vict. c. 43, s. 18 (*c*).

No drover, horse courser, waggoner, butcher, higgler, their or any of their servants, shall travel, or come into his or her inn, or lodging upon the Lord's day, or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offence. This extends to a stage van, but not to stage coaches, nor to fish carriages, whether laden or returning empty.

There shall be no concourse of people out of their own parishes on the Lord's day, for any sport or pastime, nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any persons within their own parishes: penalty on conviction of each offender within one month, before one justice, three shillings and fourpence to the poor, to be levied by distress, or to be set in the stocks for three hours (*d*).

The prosecution for trading or travelling on a Sunday must be commenced within ten days after the offence committed (*e*). It may be as well also to notice here that only one penalty can be incurred on the same day (*f*). Also it has been held that by the construction of the statute last named, s. 7, a warrant of commitment for a penalty cannot be executed on a Sunday (*g*).

A barber is punishable for following his vocation on a Sunday; and on the 19th May, 1842, Mr. John Bellerby of York was fined 5*s.* and costs for unlawfully exercising his ordinary calling of a barber on Sunday, the 15th of May; and the lord mayor quoted the opinion of Lord Cottenham, Lord Wynford, and Lord Brougham in support of the charge (*h*). There an apprentice to a barber in Scotland, bound by his indentures "not to absent himself from his master's business on holiday or weekday, late hours or early, without leave," went away on Sundays without leave and without shaving his master's customers: *Held*, that the apprentice could not be lawfully required

(*b*) See 29 Car. 2, c. 7.

(*c*) *R. v. Barton*, 13 J. P. 129.

(*d*) See 1 Car. 1, c. 1.

(*e*) See Arch. J. P. vol. ii. p. 1120;  
also see 29 Car. 2, c. 7, s. 4.

(*f*) See Paley on Conv. p. 315.

(*g*) *Id.* p. 244.

(*h*) *Phillip v. Innes*, 4 Cl. & F. 234.



to attend his master's shop on Sundays for the purpose of shaving the customers.

Mr. Justice Blackstone is of opinion that this statute does not prohibit, but rather implicitly allows any innocent recreation or amusement *within the respective parishes*, on Sunday after divine service is over.

### 43. *Sureties of the Peace.*

If in the case of sureties of the peace being required from threats, &c., the threat need not be in words, it may be inferred from a course of conduct; and if there be an ambiguity in the threats it is for the justice to give them such a construction as he thinks right, and his decision in this respect will be final (*i*).

Where A. had written a letter to a young lady, a relation of B., and B. afterwards meeting him, violently assaulted him, and said "if you write again, I will flog you within an inch of your life;" and afterwards meeting him, he said, "remember what I said to you, I am determined to put a stop to your proceedings;" this was holden a good cause for exhibiting articles of the peace (*k*).

It is stated by Mr. Chitty, that the court of Queen's Bench will not interfere with the magistrate's decision. Therefore, where a party gave information on oath to a magistrate, that from certain language used towards him he was in bodily fear from another, and the magistrate upon hearing the complaint, required the latter to enter into recognizance to keep the peace. On motion to discharge the recognizance, on the ground that the language was used in a metaphorical sense only, the court refused to interfere, because it was for the magistrate to judge in what sense the language was used.

A wife may demand it against her husband, and a husband also may have it against his wife (*l*). Upon which Mr. Crompton saith, that if the wife cannot find sureties, she shall be committed; and so, says he, a man may be rid of a shrew (*m*).

A peeress may demand surety of the peace against her husband (*n*).

A recognizance to keep the peace as to any person, for a month or for a year, or for life, or without expressing any certain time, in which case it shall be intended for life, or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the Queen's subjects in general, is good (*o*).

But magistrates ought not, nor do not usually call upon a poor person for excessive sureties, nor yet for a longer period than six months, as in many instances it is a great hardship to a person in humble circumstances to find sureties even to the amount of ten pounds, and therefore, in such cases, it is more usual to call upon the

(*i*) *R. v. Tregarthen*, 5 B. & Adol. 678.

(*k*) *Ex parte Hulse*, 21 Law J. 21, m.

(*l*) 1 Hawk. c. 60, s. 2; Cowp. 118.

(*m*) Crompt. 118.

(*n*) *Marquis Carmarthen*, Fort. 350; *Lord Strathmore*, 1 T. R. 696.

(*o*) 1 Hawk. c. 60, s. 15.



defendant himself in ten pounds, and two sureties in five pounds each, but this is entirely at the discretion of the magistrate.

The court of Queen's Bench cannot interfere to reduce the amount of security which the magistrate requires (*p*).

If the justice was deceived in the sufficiency of the bail, he, or any other justice, may afterwards compel the party to find and put in other sufficient sureties, and may take a new recognizance for the same (*q*).

Where one partner by violence forces his co-partner out of the business premises of the firm, and threatens such co-partner with violence and danger to his life if the latter should venture again to enter the premises, and it is necessary for such co-partner to enter and use the premises for the purposes of carrying on his ordinary business as partner, the court will permit the latter to exhibit articles of the peace against the former (*r*).

If nothing has been done on articles of the peace exhibited in the court of Queen's Bench, except the making an order that the defendant enter into and find sureties, and that an attachment issue for bringing him into court to enter into them, the court will refuse, as applied for too soon, a rule to show cause why the articles should not be discharged, and the prosecutor be paid such costs and charges as the court should think fit, pursuant to the 21 Jac. 1, c. 8, s. 2, which, after making provisions touching process of the peace or good behaviour, enacts, that "if it shall afterwards appear to the said courts, or either of them respectively, that the causes expressed in such writings, or any of them, be untrue, that then the judge or judges of the said courts, or either of them respectively, shall and may award such costs and damages unto the parties grieved for their or any of their wrongful vexations in that behalf, as they shall think fit" (*s*).

By stat. 16 & 17 Vict. c. 30, s. 2, where any recognizance to keep the peace or to be of good behaviour is entered into by any person, as principal or surety, before the court of general or quarter sessions of the peace of any county, riding, division, city, borough, or place, or before any justice or justices of the peace of any county, riding, division, city, borough, or place, it shall be lawful for any such court of general or quarter sessions of the peace as aforesaid, upon applications made to such court, to declare such recognizance to be forfeited, upon proof of a conviction of the party bound by such recognizance of any offence which is in law a breach of the condition of the same; and upon further proof that a notice in writing, signed by the person seeking to put such recognizance in force, has, seven clear days before the commencement of such sessions, been personally served upon or left at the usual place of abode of the party or each of the parties (if more than one) who entered into such recognizances, that an application will be made to the said general or quarter sessions, that the said recognizance shall be declared forfeited, and if such recognizance shall be declared forfeited all such proceedings shall be had thereon as in the case of a recognizance forfeited at such court of

(*p*) *Rex v. Holloway*, 2 Dowl. 525.

(*q*) Dalt. c. 116, 119.

(*r*) *R. v. Mallinson*, 14 J. P. 735.

(*s*) *Id.* 752.



general or quarter sessions, and all the provisions of the Act of the third year of King George the Fourth, chapter forty-six, and of the Act of the fourth year of the said King, chapter thirty-seven, applicable to a recognizance so forfeited at such court, shall apply to a recognizance which shall, upon such application and proof as hereinbefore mentioned, be declared to be forfeited; and upon notice in writing of such intended application to the said general or quarter sessions being given to any justice or justices, before whom any such recognizance shall have been taken, four clear days before the commencement of the said sessions, the said justice or justices shall transmit the said recognizance to the clerk of the peace of the county, riding, division, city, borough, or place within which the said recognizance shall have been taken, with a certificate that the said recognizance is sent to him by reason of such last-mentioned notice having been so given as aforesaid.

Sect. 3. No person committed to prison under any warrant or order of one justice of the peace for or on account of not entering into recognizances or finding sureties to keep the peace, or to be of good behaviour, shall be detained under such warrant or order for more than twelve calendar months from the time of such commitment.

#### 44. *Swearing.*

Constables or other peace officers are required to apprehend all persons profanely swearing or cursing in their presence and hearing, if not known to them; if known, to summon them before a justice of the peace, and for neglect of duty by every such officer, penalty, 40s. (t). The following is the scale of forfeiture on conviction before one justice: viz., every day-labourer, common soldier, common sailor, or common seaman, 1s.; every other person under the degree of a gentleman, 2s.; and every person of or above the degree of a gentleman, 5s.; for a second offence, after a former conviction, double these sums; and for a third, treble; to be applied for the poor of the parish where the offence was committed (u).

For a non-payment of penalty or security given for the same, if a seaman or a soldier, to be set in the stocks for one hour, or for two hours for any number of offences at the same time; or if not a seaman or soldier, to be committed to the house of correction for ten days, and for six days further, if he do not pay the charges of the information and conviction. The party charged must be stated and proved to be above the age of 16 years. The oaths and curses must also be set forth, as a profane oath or curse is a matter of law, and cannot be left for a peace office to determine.

But it is sufficient, if it be for swearing one hundred and fifty oaths, in these words, viz., specifying the words once without repeating each one hundred and fifty times (x).

Proceedings should also be commenced within eight days next after the offence committed; and by section 14, the whole of the clerk's

(t) See 19 G. 2, c. 21, s. 3.

(u) Id. ss. 1, 10.

(x) See *R. v. Roberts*, 1 Stra. 603.  
Also see Paley on Conv., p. 102.



fees shall be one shilling, and no more. For the form of conviction, in the case of swearing, see 2 *Arch. J. P.* 1129.

#### 45. Theatres.

By statute 6 & 7 Vict. c. 68, all theatres for the performance of plays must be licensed by the magistrates (beyond the limits of the lord chamberlain); fees of not more than five shillings per month during the time such theatre is licensed to be kept open. Penalty for performing in any place not licensed not exceeding 10*l.* for every day: proof of being licensed lies on the party accused. Penalties to be recovered by distress and sale of the goods and chattels, or to be imprisoned for not more than six calendar months. Penalties first to be applied in defraying the expenses of the prosecution, and the residue (if any) for the use of Her Majesty; definition of play, shall include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage; not to interfere with any theatrical representation in any booth or show which by the justices of the peace, or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind. "Tumblers are not within the above Act."

#### 46. Trespass, wilful.

A wilful trespass on another person's property without doing any real damage is not sufficient to justify the apprehension of the parties under 1 G. 4, c. 56, s. 3 (since repealed, but re-enacted by 7 & 8 G. 4, c. 30). And in an action of trespass for the apprehension, the jury cannot presume damage (a).

To constitute an offence under the 7 & 8 G. 4, c. 30, the party must have actually committed the wilful damage; therefore a commitment which charges a party with *carrying away* part of a fence would be bad (b).

There must be proof of actual damage done; therefore a commitment which charges a party with *breaking* part of a fence would be good. The mere fact of a man treading down the grass by walking in a field out of the path, is not sufficient (c). The above must be understood to mean common pasturage, and not meadow.

In the case of *Dewey v. White*, M. & M. 56, Best, C. J., in charging the jury, said, that the power given by the 7 & 8 G. 4, c. 30, was extremely large, and that it ought to receive a strict construction; that the circumstances of the trespass being wilful was not sufficient; that there must be actual pecuniary damage to justify the apprehension under the statute; presumed damage will not do.

(a) *Butler v. Turley*, 2 C. & P. 585; Best, 1 M. & M. 54.

(b) *R. v. Harper*, 1 D. & R. 223.

(c) *Butler v. Turley*, 2 C. & P. 585.



47. *Vagrants.*

*Idle and disorderly persons*, 408. | *Fortune telling*, 409.  
*Rogues and vagabonds*, 408. | *Incorrigible rogues*, 410.

*Idle and disorderly persons.*] Every person being able wholly or in part to maintain himself or herself, or his or her family by work, or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect, he or she, or any of his or her family, whom he or she may be legally bound to maintain, shall have become chargeable in any parish, township or place; every person returning to and becoming chargeable in any parish, township or place, from whence he or she shall have been legally removed, by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, township or place;

Every petty chapman or pedlar wandering abroad and trading without being duly licensed, or otherwise authorized by law; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing, or procuring, or encouraging any child or children so to do; shall be deemed an idle and disorderly person within the true intent and meaning of this Act, and on conviction before one justice on the oath of one witness, or on confession, may be committed to the house of correction to hard labour for not more than one month (*d*).

*Rogues and vagabonds.*] Every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person;

Every person pretending, or professing to tell fortunes, or using any subtle craft, means, or device by palmistry or otherwise, to deceive or impose on any of his Majesty's subjects; every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself; every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition; every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in view thereof, or in any place of public resort, with intent to insult any female; every person wandering abroad and endeavouring by the exposure of wounds or deformities to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature, or kind, under any false or fraudulent pretence;



every person running away and leaving his wife, or his or her child or children chargeable, or whereby she or they or any of them shall become chargeable to any parish, township, or place; every person playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming at any game or pretended game of chance; (a halfpenny is an instrument within this Act when used at the game of pitch-halfpenny, or pitch-and-toss, and such offenders may be convicted under the same as a rogue and vagabond.) Every person having in his or her custody, or possession, any picklock, key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling house, warehouse, coachhouse, stable, or out building, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument, with intent to commit any felonious act; every person being found in or upon any dwelling-house, warehouse, coachhouse, stable, or out-house, or in any inclosed yard, garden, or area, for any unlawful purpose; every suspected person, or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf or warehouse, near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit a felony (*e*); and every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer, so apprehending him or her, and subsequently convicted of the offence for which he or she shall have been so apprehended; shall be deemed a rogue and vagabond within the intent and meaning of this Act, and on conviction before one or more justices, may be committed to the house of correction for three calendar months to hard labour (*f*). And all such keys, picklocks, guns, pistols, &c., shall be forfeited.

*Fortune telling.*] Sect. 4 of the 5 G. 4, c. 83, enacts, that every person pretending or professing to tell fortunes, or using any subtle craft, pretence, or device, by palmistry or otherwise, to deceive and impose on any of Her Majesty's subjects . . . shall be deemed a rogue and vagabond. A conviction adjudged the plaintiff to be a rogue and vagabond within the meaning, &c., for that he "did pretend and profess to tell the fortune of one A. B., with the intent to deceive and impose upon the said A. B., &c.:" *Held*, a good conviction (*g*)

Also by 1 & 2 Vict. c. 38, s. 2, every person wilfully exposing to view in the window, or other part of any shop, or other building situate in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition, shall be deemed a rogue and vagabond, and be punished as above.

On the commitment of a person charged with having been found, &c., with crow, jack, bit, &c., the same should state that he had such implements upon him, when found, and that by name, such as (crow, &c.) An objection was taken to a commitment, that it did not state

(*e*) See *Ex parte Brown*, 21 Law J. 113; *ex parte Jones*, id. 116.

(*f*) 5 G. 4, c. 83, s. 4.

(*g*) *Coulson v. Sanders*, 9 J. P. 276



the above facts. Lord Kenyon, C. J., said, "I yield with great reluctance to the objection, but I am afraid it is well founded;" and the prisoner was discharged (*h*).

*Incorrigible rogues.*] Every person breaking or escaping out of any place of legal confinement before the expiration of the term for which he or she shall have been committed, or ordered to be confined, by virtue of this Act; every person committing any offence against this Act, which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be, and duly convicted thereof; and every person apprehended as a rogue and vagabond, and violently resisting any constable, or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended, shall be deemed an incorrigible rogue within the true intent and meaning of this Act; and any justice of the peace may commit such offender, being convicted thereof before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses, to the house of correction, there to remain until the next general or quarter sessions of the peace, and to be kept to hard labour during the period of his or her imprisonment (*i*). And by the same statute, sect. 6, all constables are bound under the penalty of 5*l.* to apprehend and take before a justice of the peace, all idle and disorderly persons, and rogues and vagabonds. Also see 7 & 8 Vict. c. 101, s. 6. The mother of a bastard is punishable for the neglect or desertion of it, under the Vagrant Act.

The following form may be used under 5 & 6 Vict. c. 109, by the magistrates' clerks.

The Overseers of — in the North Riding of Yorkshire.  
To the Magistrates' Clerks, Greta Bridge, Dr.

18—: To conviction and commitment of — for — being apprehended in the parish of —, —*l.* —*s.* —*d.* Allowed by — this — day of — 18—.

Where any felony or misdemeanor is committed on the boundary or boundaries of two or more counties, or within five hundred yards of such boundary, or shall be begun in one county and completed in another, the offender may be tried in either county (*k*).

Where any felony or misdemeanor shall be committed, or any person or property in or upon any coach, waggon, cart, or other carriage employed in any journey, or a journey or voyage upon any navigable river, canal, or inland navigation, the offender may be tried in any county through any part of which the carriage or vessel shall have passed in the course of the journey or voyage (*l*).

Any person may apprehend a vagrant, and either take him before a justice or deliver him to a constable. It may be as well to remark here, that where a constable sees, or is called to quell an affray, which perhaps consists of several parties, it would be well that, previous to attempting to quell them or arrest them, he should place

(*h*) *R. v. Brown*, 8 T. R. 26.  
(*i*) See 5 G. 4, c. 83, s. 5.

(*k*) See 7 G. 4. c. 64, s. 12.  
(*l*) *Id.* s. 13.



some trustworthy person at a short distance outside the crowd so that should the constable be struck or kicked, the person outside might see; otherwise should the officer receive any injury from behind, that he himself could not state who it was that inflicted such injury, no one would know who had done it, and every one would be clear, according to his own account. Yet notwithstanding this, not only, the actual affrayer, but all present taking any part in the affray or joining in the offence, would be guilty of a breach of the peace.

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## SECTION IX.

### PROCEEDINGS BEFORE JUSTICES.

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1. *Proceedings in ordinary Cases*, p. 411.
  2. *Juvenile Offenders*, p. 411.
  3. *Summary Convictions for Larceny*, p. 419.
  4. *Special Case stated by Justices*, p. 428.
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#### 1. *Proceedings before Justices in ordinary Cases.*

Jervis's Act, 11 & 12 Vict. c. 42, directs the mode of proceeding for indictable offences, before justices out of sessions, in such a complete and lucid manner, giving all the forms that are at all necessary in practice, that it would be useless for me to notice the subject again in this place. The reader will find the whole of the Act and forms, *ante*, p. 143 to 183, under the title "Commitment." The same may be said as to summary convictions and orders; they are in like manner treated of by another of Jervis's Acts, 11 & 12 Vict. c. 43, and the whole practice very fully explained, with all necessary forms, *ante*, p. 187 to 233.

#### 2. *Juvenile Offenders.*

*Stat. 10 & 11 Vict. c. 82,—An Act for the more speedy Trial and Punishment of Juvenile Offenders.*

Sect. 1. *Persons not exceeding fourteen years of age committing certain offences may be summarily convicted by two justices.—Justices may dismiss the accused if they deem it expedient not to inflict any punishment.]* Whereas, in order, in certain cases to insure the more speedy trial of juvenile offenders, and to avoid the evils of their long imprisonment previously to trial, it is expedient to allow of such offenders being proceeded against in a more summary manner than is now by law provided, and to give further power to bail them: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent



of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that every person who shall, subsequently to the passing of this Act, be charged with having committed or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence which now is or hereafter shall or may be by law deemed or declared to be simple larceny, or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence shall not, in the opinion of the justices before whom he or she shall be brought or appear as hereinafter mentioned, exceed the age of fourteen years, shall, upon conviction thereof, upon his own confession or upon proof, before any two or more justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled, at the usual place, and in open court, be committed to the common gaol or house of correction within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term not exceeding three calendar months, or, in the discretion of such justices, shall forfeit and pay such sum, not exceeding three pounds, as the said justices shall adjudge, or, if a male, shall be once privately whipped, either instead of or in addition to such imprisonment, or imprisonment with hard labour; and the said justices shall from time to time appoint some fit and proper person, being a constable, to inflict the said punishment of whipping when so ordered to be inflicted out of prison: provided always, that if such justices upon the hearing of any such case shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged, on finding surety or sureties for his future good behaviour, or without such sureties, and then make out and deliver to the party charged a certificate under the hands of such justices stating the fact of such dismissal, and such certificate shall and may be in the form or to the effect set forth in the schedule hereto annexed in that behalf: provided also, that if such justices shall be of opinion, before the person charged shall have made his or her defence, that the charge is from any circumstance a fit subject for prosecution by indictment, or if the person charged shall, upon being called upon to answer the charge, object to the case being summarily disposed of under the provisions of this Act, such justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this Act had not been passed.

2. *Power to justices to hear and determine.*—*One magistrate may, in certain cases, perform acts usually done by two.*] And be it enacted, that any two or more justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled, and in open court, before whom any such person as aforesaid charged with any offence made punishable under this Act shall be brought or appear, are hereby authorized to hear and determine the case under the provisions of this Act: provided always, that any magistrate of the police courts of the metropolis sitting at any such police court, and any stipendiary magistrate sitting in open court, having by law the power to do acts usually required to be done by two or more justices of the peace, shall and may within their respective jurisdic-



tions hear and determine every charge under this Act, and exercise all the powers herein contained, in like manner and as fully and effectually as two or more justices of the peace in petty sessions assembled as aforesaid can or may do by virtue of the provisions in this Act contained.

3. *Proceedings under this Act a bar to further proceedings.*] And be it enacted, that every person who shall have obtained such certificate of dismissal as aforesaid, and every person who shall have been convicted under the authority of this Act, shall be released from all further or other proceedings for the same cause.

4. *Mode of compelling the appearance of persons punishable on summary conviction.*] And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this Act, be it enacted, that where any person whose age is alleged not to exceed fourteen years shall be charged with any such offence on the oath of a credible witness before any justice of the peace, such justice may issue his summons or warrant to summon or to apprehend the person so charged to appear before any two justices of the peace in petty sessions assembled as aforesaid at a time and place to be named in such summons or warrant.

5. *Power to one justice to remand and take bail.*] And be it enacted, that any justice or justices of the peace, or if he or they shall think fit, may remand for further examination or for trial, or suffer to go at large upon his or her finding sufficient surety or sureties, any such person as aforesaid charged before him or them with any such offence as aforesaid; and every such surety shall be bound by recognizance to be conditioned for the appearance of such person before the same or some other justice or justices of the peace for further examination, or for trial before two or more justices of the peace in petty sessions assembled as aforesaid, or for trial at some superior court, as the case may be; and every such recognizance may be enlarged from time to time by any such justice or justices to such further time as he or they shall appoint; and every such recognizance which shall not be enlarged shall be discharged without fee or reward, when the party shall have appeared according to the condition thereof.

6. *Application of fines.*] And be it enacted, that every fine imposed by any justices under the authority of this Act shall be paid to the clerk to the convicting justices, and shall be by him paid over to the use of the general county rate, or rate in the nature of a general county rate, for the county, riding, division, borough, liberty, franchise, city, town, or place in which the offence in respect of which such fine shall be imposed may have been committed.

7. *As to the summoning and attendance of witnesses.*] And be it enacted, that it shall be lawful for any justice of the peace by summons to require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this Act, at a time and place to be named in such summons; and such justice may require and bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge; and in case any person so summoned or required or bound as aforesaid



shall neglect or refuse to attend in pursuance of such summons or recognizance, then upon proof being first given of such person's having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, it shall be lawful for the justices before whom any such person ought to have attended to issue their warrant to compel his appearance as a witness.

8. *Service of summons.*] And be it enacted, that every summons issued under the authority of this Act may be served by delivering a copy of the summons to the party, or by delivering a copy of the summons to some inmate at such party's usual place of abode, and every person so required, by any writing under the hand or hands of any justice or justices, to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

9. *Form of conviction.*] And be it enacted, that the justices before whom any person shall be summarily convicted of any such offence as hereinbefore mentioned may cause the conviction to be drawn up in the form of words set forth in the schedule to this Act annexed, or in any other form of words to the same effect, which conviction shall be good and effectual to all intents and purposes.

10. *No certiorari, &c.*] And be it enacted, that no such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

11. *Convictions to be returned to the quarter sessions.*] And be it enacted, that the justices of the peace before whom any person shall be convicted under the provisions of this Act shall forthwith thereafter transmit the conviction and recognizances to the clerk of the peace for the county, borough, liberty, or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court of general quarter sessions of the peace; and the said clerk of the peace shall transmit to one of Her Majesty's principal secretaries of state a monthly return of the names, offences, and punishments mentioned in the convictions, with such other particulars as may from time to time be required.

12. *No forfeiture upon convictions under Act, but presiding justices may order restitution of property.*] And be it enacted, that no conviction under the authority of this Act shall be attended with any forfeiture, but whenever any person shall be deemed guilty under the provisions of this Act it shall be lawful for the presiding justices to order restitution of the property in respect of which such offence shall have been committed to the owner thereof or his representatives, and if such property shall not then be forthcoming, the same justices, whether they award punishment or dismiss the complaint, may inquire into and ascertain the value thereof in money, and if they think proper order payment of such sum of money to the true owner, by the person or persons convicted, either at one time or by instalments at such periods as the Court may deem reasonable, and the party or parties so ordered to pay shall be liable to be sued



for the same as a debt in any court in which debts may be by law recovered, with costs of suit, according to the practice of such court.

13. *Recovery of penalties.*] And be it enacted, that whenever any justices of the peace shall adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this Act, and such penalty shall not be forthwith paid, it shall be lawful for such justices, if they shall deem it expedient, to appoint some future day for the payment of such penalty, and to order the offender to be detained in safe custody until the day so to be appointed, unless such offender shall give security to the satisfaction of such justices for his or her appearance on such day; and such justices are hereby empowered to take such security by way of recognizance or otherwise, at their discretion; and if at the time so appointed such penalty shall not be paid, it shall be lawful for the same or any other justices of the peace, by warrant under their hands and seals, to commit the offender to the common gaol or house of correction within their jurisdiction, there to remain for any time not exceeding three calendar months, reckoned from the day of such adjudication, such imprisonment to cease on payment of the said penalty.

14. *Expenses of prosecutions how to be paid.*] And be it enacted, that the justices in petty sessions assembled as aforesaid, before whom any person shall be prosecuted or tried for any offence cognizable under this Act, are hereby authorized and empowered, at their discretion, at the request of the prosecutor or of any other person who shall appear on recognizance or summons to prosecute or give evidence against any person accused of any such offence, to order payment to the prosecutor and witnesses for the prosecution of such sums of money as to the justices shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and to order payment to the constables and other peace officers for the apprehension and detention of any person or persons so charged; and although no conviction shall actually take place, it shall be lawful for the said justices to order all or any of the payments aforesaid when they shall be of opinion that the parties or any of them have acted *bonâ fide*; and the amount of expenses of attending before the examining magistrate, and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses, and constables for attending at the said petty sessions, shall be ascertained by and certified under the hands of the justices in such petty session assembled as aforesaid: provided always, that the amount of the costs, charges, and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of forty shillings: provided also, that no expenses shall be allowed to prosecutors, witnesses, and constables exceeding the sums allowed, according to a scale of fees and allowances authorized and settled by the justices of the peace at quarter sessions assembled, according to the statute in such case made and provided with



respect to preliminary inquiries before justices of the peace in cases of felony.

15. *Orders for payment how to be made.*] And be it enacted, that every such order of payment to any prosecutor or other person, after the amount thereof shall have been certified by the justices as aforesaid, shall be forthwith made out and delivered by the clerk of the said petty session unto such prosecutor or other person, upon such clerk being paid for the same the sum of sixpence for every such person, and no more, and, except in cases hereinafter provided for, shall be made upon the treasurer of the county, riding, or division in which the offence shall have been committed, or shall be supposed to have been committed, who is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any other person duly authorized to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts: provided always, that no such order shall be valid, nor shall such treasurer pay any money thereon, unless it shall have been framed and presented in such form and under such regulations as the justices of the peace in quarter sessions assembled shall from time to time direct.

16. *Payment of Costs and expenses with respect to boroughs, &c.*] And whereas offences cognizable under this Act may be committed in liberties, franchises, cities, towns, and places which do not contribute to the payment of any county rate, some of which raise a rate in the nature of a county rate, and others have neither any such rate nor any fund applicable to similar purposes, and it is just that such liberties, franchises, cities, towns, and places should be charged with all costs, expenses, and compensations ordered by virtue of this Act in respect of such offences as aforesaid committed or supposed to have been committed therein respectively; be it therefore enacted, that all sums directed to be paid by virtue of this Act in respect of such offences as aforesaid committed or supposed to have been committed in such liberties, franchises, cities, towns, and places shall be paid out of the rate in the nature of a county rate, or out of any fund applicable to similar purposes, where there is such a rate or fund, by the treasurer or other officer having the collection or disbursement of such rate or fund, and where there is no such rate or fund in such liberties, franchises, cities, towns, or places shall be paid out of the rate or fund for the relief of the poor of the parish or township, district or precinct therein, where the offence was committed or supposed to have been committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and the order of court shall in every such case be directed to such treasurer, overseers, or other officers respectively, instead of the treasurer of the county, riding, or division, as the case may require.

17. *Proceedings against persons acting under this Act.*] And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be



commenced within three calendar months after the fact committed, and not otherwise; and notice in writing of such action or prosecution, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action or prosecution; and in any such action or prosecution the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action or prosecution after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in such action, the plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.

18. *Extent of Act.*] And be it enacted, that nothing in this Act contained shall extend to Scotland or Ireland.

19. *Act may be amended, &c.*] And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of parliament.

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SCHEDULE of Forms to which this Act refers.

*Form of Certificate of Dismissal.*

— } We — of Her Majesty's justices of the peace for the  
to wit. } county of — [or I, a magistrate of the police court of  
— as the case may be,] do hereby certify, that on the — day  
of — in the year of our Lord — at — in the said county  
of — M. N. was brought before us the said justices [or me the  
said magistrate] charged with the following offence, (that is to  
say,) [here state briefly the particulars of the charge], and that we  
the said justices [or I the said magistrate] thereupon dismissed the  
said charge. Given under our hands [or my hand] this — day  
of —.

*Form of Conviction.*

— } Be it remembered, that on the — day of — in the  
to wit } year of our Lord one thousand eight hundred and —  
at — in the county of — [or riding, division, liberty, city, &c.,  
as the case may be,] A. O. is convicted before us, J. P. and Q. R.,  
two of Her Majesty's justices of the peace for the said county [or



riding, &c.,] or me *S. T.*, a magistrate of the police court of — as the case may be], for that he the said *A. O.* did [*specify the offence, and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*], and we the said *J. P.* and *Q. R.* [or I the said *S. T.*] adjudge the said *A. O.* for his said offence to be imprisoned in the — [or to be imprisoned in the — and there kept to hard labour for the space of —] [or we [or I] adjudge the said *A. O.* for his said offence to forfeit and pay —], [*here state the penalty actually imposed*], and in default of immediate payment of the said sum, to be imprisoned in the — [or to be imprisoned in the — and there kept to hard labour] for the space of — unless the said sum shall be sooner paid. Given under our hands and seals [or my hand and seal] the day and year first above mentiond.

*And by stat. 13 & 14 Vict. c. 37,—An Act for the further Extension of Summary Jurisdiction in Cases of Larceny.*

Whereas by an Act passed in the eleventh year of the reign of Her Majesty, intituled “An Act for the more speedy Trial and Punishment of Juvenile Offenders,” it is enacted that every person who should subsequently to the passing of that Act be charged with having committed or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence which then was or thereafter should or might be by law deemed or declared to be simple larceny, or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence should not, in the opinion of the justices before whom he or she should be brought or appear as thereafter mentioned, exceed the age of fourteen years, should, upon conviction thereof, upon his own confession or upon proof before any two or more justices of the peace for any county, riding, division, borough, liberty, or place, in petty sessions assembled at the usual place and in open court, be punished as therein mentioned; and whereas by an Act passed in the twelfth year of the reign of Her Majesty, intituled “An Act for the more speedy Trial and Punishment of Juvenile Offenders in Ireland,” it is enacted that every person who should subsequently to the passing of that Act be charged with having committed or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence in Ireland, which then was or thereafter should or might be by law deemed or declared to be simple larceny or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence should not, in the opinion of the justices before whom he or she should be brought or appear as thereafter mentioned, exceed the age of fourteen years, should, upon conviction thereof upon his own confession or upon proof, before any two or more justices of the peace for any county, riding, division, borough, liberty, or place, in petty sessions assembled at the usual place and in open court, be punished as therein mentioned; and whereas the expense and delay sustained in the prosecution of persons guilty of petty thefts tend to the increase of



such offences; and it is expedient that the provisions of the said Acts should be extended as hereinafter provided: be it enacted therefore by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said recited Acts, and the jurisdiction thereby given, and all the provisions therein contained, shall extend and be applicable to all cases in which any person shall subsequently to the passing of this Act be charged with any such offence as in the said Acts mentioned, and the age of the person so charged at the period of the commission or attempted commission of the offence shall not, in the opinion of the justices before whom he or she shall be brought or appear as therein mentioned, exceed the age of sixteen years; and that the provisions of the said recited Acts for summons, warrant to summon and apprehend, and all other the provisions applicable to the cases where any person whose age is alleged not to exceed fourteen years shall be charged with any such offence as in the said Acts mentioned, shall extend and be applicable to all cases in which any person whose age shall not exceed sixteen years shall be charged with any such offence as aforesaid: provided always, that nothing herein contained shall authorize or empower any justice or justices to order the punishment of whipping to be inflicted upon any offender whose age shall exceed the age of fourteen years.

2. *Justice to ask whether accused wishes the charge to be tried by a jury.*] And be it enacted, that one of the justices before whom any person shall be charged and proceeded against under this Act or the hereinbefore mentioned Acts, before such person shall be asked whether he or she has any cause to show why he or she should not be convicted, shall say to the person so charged these words, or words to the like effect: "We shall have to hear what you wish to say in answer to the charge against you; but if you wish the charge to be tried by a jury, you must object now to our deciding upon it at once;" and if such person, or a parent of such person, shall then object, the justices shall proceed with the charge as if the said Acts had not been passed.

III. *Act not to extend to Scotland.*] And be it enacted, that nothing in this Act contained shall extend to Scotland.

### 3. *Summary Conviction for Larceny.*

*By stat. 18 & 19 Vict. c. 126,—An Act for diminishing Expense and Delay in the Administration of Criminal Justice in certain Cases, it is enacted:—*

Sect 1. *Power to justices at petty sessions to punish persons charged with larceny, &c. summarily.—If parties accused do not consent, justices to deal with cases as if this Act had not passed.*] Where any person is charged before any justices of the peace assembled at such petty sessions as hereinafter provided with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not, in the judgment of such justices, exceed five shillings, or with having attempted to commit larceny from the person, or simple larceny, it shall be lawful for such justices to hear and



determine the charge in a summary way, and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three calendar months, and if they find the offence not proved they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands, stating the fact of such dismissal; and every such conviction and certificate respectively may be in the forms (A.) and (B.) in the schedule to this Act, or to the like effect: provided always, that if the person charged do not consent to have the case heard and determined by such justices, or if it appear to such justices that the offence is one which, owing to a previous conviction of the person charged, is punishable by law with transportation or penal servitude, or if such justices be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, such justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed: provided also, that if upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged, without proceeding to a conviction.

2. *Justices to ask the accused whether he consents to the charge being summarily determined.*] Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provisions, one of such justices, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes" (as the case may be); and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this Act in respect to such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence the justices shall hear such defence, and then proceed to dispose of the case summarily.

3. *Persons charged with larceny, &c. may plead guilty before justices in petty sessions, and be sentenced forthwith.—Justices to warn the accused that he is not obliged to plead.*] Where any person is charged before any justices at such petty sessions as afore-



said with simple larceny (the property alleged to have been stolen exceeding in value five shillings), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months; and every such conviction may be in the form (C.) in the schedule to this Act, or to the like effect: provided always, that the said justices, before they ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them he will be committed for trial in the usual course.

4. *Persons accused may have assistance of counsel, &c.]* In every case of summary proceeding under this Act the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

5. *Power to remand persons charged to next petty sessions.]* Where any person is charged before any justice or justices with any offence mentioned in this Act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this Act, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorized to remand a party accused under the Act passed in the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-two, section twenty-one, or under the Petty Sessions Act (Ireland), 1851, section fourteen.

6. *Forfeited recognizances to be transmitted to the clerk of the peace.]* If any person suffered to go at large upon entering into such recognizance as the justice or justices are authorized under the last-mentioned Act to take on the remand of a party accused, do not afterwards appear pursuant to such recognizance, then the justices before whom he ought to have appeared shall certify (under the hands of two of them) on the back of the recognizance, to the clerk of the peace of the county or place, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance.

7. *Convictions and other proceedings to be returned to the quarter sessions.]* The justices adjudicating under this Act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of the witnesses for the prosecution



and for the defence, and the statement of the accused, to the next court of general or quarter sessions for the county or place, therein to be kept by the proper officer among the records of the court: and a copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceeding whatever.

8. *Justices may order restitution of property.*] It shall be lawful for the justices by whom any person is convicted under this Act to order restitution of the property stolen, taken, or obtained by false pretences, in those cases in which the court before whom the person convicted would have been tried but for this Act may be by law authorized to order restitution.

9. *Petty sessions to be an open court, and held for petty sessional division.*] Every petty sessions for the purposes of this Act shall be an open public court, and shall be the petty sessions holden for a petty sessional division; and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held.

10. *11 & 12 Vict. c. 43, not to apply to proceedings under this Act.*] The provisions of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three, shall not be construed as applying to any proceeding under this Act.

11. *Effect of conviction.*] Every conviction by justices in petty sessions under this Act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this Act shall be attended with any forfeiture.

12. *Proceedings under this Act a bar to further proceedings.*] Every person who obtains a certificate of dismissal, or is convicted under this Act shall be released from all further or other criminal proceedings for the same cause.

13. *No conviction to be quashed for want of form.*] No conviction, sentence, or proceeding under this Act shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

14. *Justices may order payment of expenses.*] Where any charge is summarily adjudicated upon under this Act, or an offender is under this Act convicted by justices in petty sessions upon a plea of "guilty," it shall be lawful for the justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or give evidence against the person charged, if such justices think fit so to do, to grant a certificate to such person of the amount of the compensation which such justices may deem reasonable for his expenses, trouble, and loss of time therein, subject nevertheless to the regulations made or to be made as hereinafter mentioned; and every such certificate shall, when granted in England, have the effect of an order of court for the payment of the expenses of a prosecution



made under the Act of the seventh year of King George the Fourth, chapter sixty-four, and the Acts amending the same, and when granted in Ireland shall have the effect of an order of court for the payment of the expenses of a prosecution made under the Act of the fifty-fifth year of King George the Third, chapter ninety-one, and the Acts amending the same; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in such order of court; and all certificates to be granted under this Act shall be subject to the like regulations made or to be made in relation thereto as the certificates mentioned in the said Act of the seventh year of King George the Fourth to be granted by examining magistrates are or may be subject to under the Act of the session holden in the fourteenth and fifteen years of Her Majesty, chapter fifty-five: provided also, that the amount of the fees payable to the clerks of the magistrates in petty sessions, in respect of any proceeding under this Act, and of the fees payable to the clerks of the peace for filing the depositions, conviction, or certificate of dismissal aforesaid, and of all such expenses of apprehending the person charged, and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation aforesaid, and paid in the like manner.

15. *Town hall, court house, &c. of county, city, or borough may be used for petty sessions held under this Act.*] In every city, borough, town or place in England where any petty sessions shall be holden under this Act, the town hall, court house, or other public building therein belonging to any county, city, borough, town, or place, or any court house in such city, borough, town, or place provided by the commissioners of Her Majesty's Treasury, under the Act of the session holden in the ninth and tenth years of Her Majesty, chapter ninety-five, may be used for the purpose of holding such petty sessions, without any charge for rent or other payment, save and except the reasonable and necessary charges for lighting, warming, and cleaning, when such public building is used for the purpose of holding such courts of petty sessions, and for all other expenses necessarily incidental to the use of the said building for the purposes of the said courts: provided always, that the necessary arrangements shall be made so that the sittings of the said courts of petty sessions shall not interfere with the business of the county, city, borough, town or place, or other business usually transacted in such town hall, court house, or other public building, or any purpose for which any such town hall, court house, or other public building may be used by virtue of any Act of parliament in that behalf.

16. *Any metropolitan police magistrate or stipendiary magistrate may act alone.*] Any one of the magistrates appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, or any magistrate appointed to act at the police courts of the Dublin metropolitan district, and sitting at a police court within the said district, or any stipendiary magistrate appointed for any city, town, liberty, borough, or district, and sitting at a police court or other place appointed in that behalf, may, in the case of persons charged before such magis-



trate, do alone all acts by this Act authorized to be done by justices of the peace in petty sessions, and all the provisions of this Act referring to justices in petty sessions shall be read and construed as referring also to such magistrate.

17. *Nothing to affect provisions of 10 & 11 Vict. c. 82; and 13 & 14 Vict c. 37.]* Nothing in this Act shall affect the provisions of the Act of the session holden in the tenth and eleventh years of Her Majesty, chapter eighty-two, "For the more speedy Trial and Punishment of Juvenile Offenders," or of the Act of the session holden in the thirteenth and fourteenth years of Her Majesty, chapter thirty-seven, "For the further Extension of Summary Jurisdiction in Cases of Larceny," or of the Summary Jurisdiction (Ireland) Act, 1851; and this Act shall not extend to persons punishable under the said Acts, so far as regards offences for which such persons may be punished thereunder.

18. *As to compensation to clerks of peace and other officers.]* And whereas the fees and emoluments of clerks of the peace for counties and boroughs, and of other officers of the courts of quarter sessions, in criminal proceedings, may be seriously diminished by the operation and effect of this Act, and it is just and reasonable that full compensation for any such loss should be made in respect thereof to such clerks of the peace and other officers appointed before the passing of this Act: Be it enacted, that immediately after the passing of this Act the commissioners of Her Majesty's treasury shall, upon the application of any such clerk of the peace or other officer, by such means and in such manner as they may think proper, inquire into and ascertain the annual amount, to be computed upon an average of five years immediately preceding the passing of this Act, or of such shorter period as such clerk of the peace or other officer shall have been in office, of the fees and emoluments in criminal prosecutions received by such clerk of the peace or other officer; and the said commissioners shall, upon the like application, also ascertain, in such manner as they may think proper, the total amount of fees and emoluments in criminal prosecutions received by such clerk of the peace or other officer during any year after the passing of this Act; and the said commissioners are hereby authorized and empowered, by warrant under their hands, to award to such clerk of the peace or other officer the deficiency, when and so often as the same shall occur, between the last mentioned amount and the annual average amount so ascertained as aforesaid, and the sum so awarded shall be paid out of any monies which may be provided by parliament for that purpose; provided, that in all cases where any such clerk of the peace, by reason of his being paid by salary, under an order made by virtue of the Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter fifty-five, shall pay such fees and emoluments as aforesaid to the treasurer of the county or borough for which he is clerk of the peace in aid of the county or borough rate, as the case may be, such deficiency, when so ascertained as aforesaid, shall be paid to the treasurer of such county or borough respectively.

19. *Power to increase salary of chief magistrate to a sum not exceeding 1,500*l*.]* And whereas by section nine of the Act of the



session holden in the second and third years of Her Majesty, chapter seventy-one, provision is made for payment out of the monies in the hands of the receiver of the metropolitan police district of such salaries as Her Majesty shall direct to the magistrates of the police courts of the metropolis, the salary to the chief magistrate not being more than one thousand two hundred pounds, and to each of the other magistrates not more than one thousand two hundred pounds: and whereas after the passing of the said Act the salary of the chief magistrate was fixed at one thousand two hundred pounds, and the salaries of the other police magistrates at one thousand pounds: and whereas the duties of the said chief and other magistrates have increased, and are subject under this Act to be further increased: and whereas the salaries of such other magistrates have, in consequence of such increase of duty, been increased from one thousand pounds to the limit permitted by the said Act, and it is expedient to authorize such increase of the salary of the said chief magistrate as hereinafter mentioned: the salary to be paid out of the monies aforesaid to the said chief magistrate shall be such yearly sum, not exceeding one thousand five hundred pounds, as Her Majesty may direct.

20. *Provisions of 15 & 16 Vict. c. 73, for payment by salary in lieu of fees to clerks of assize for their duties as associates extended to the whole office of clerk of assize, &c.*] And whereas by the Act of the session holden in the fifteenth and sixteenth years of Her Majesty, chapter seventy-three, certain powers were granted and provisions made for the payment to the several clerks of assize of annual sums for salaries, and for the expenses of their office, in respect of their duties as associates, in lieu of the fees and emoluments appertaining to those duties: And whereas it is expedient that the principle of payment by salary in lieu of fees should be further provided for, and that the clerks of assize should be so paid for the performance of all their other duties: Be it therefore enacted, that all fees and emoluments heretofore payable to the clerks of assize for the performance of their duties as clerks of the crown shall be and they are hereby abolished; and all the powers and provisions made by the before mentioned Act, except as is hereinafter provided, for the payment of clerks of assize by salary in lieu of fees, in respect of their duties as associates, shall be and the same are hereby extended and made applicable to the payment of clerks of assize by salary, and the expenses of their offices, in lieu of fees and emoluments, for the performance of their duties as clerks of the crown and of all other duties appertaining to the office of clerk of assize: provided always, that the commissioners of Her Majesty's treasury for the time being shall fix and determine the amount of salary to be allowed to any subordinate officer now employed or who shall hereafter be employed by any clerk of assize, and shall be empowered to order the payment of such salary to the said officers in the first instance, and not through the medium of the clerk of assize: provided also, that the salaries and expenses of the officers of the said clerks of assize for the whole of their duties on the criminal and civil sides of the court shall be paid out of any monies which may be provided by parliament for that purpose.



21. *So much of 12 Ric. 2, c. 10, and 14 Ric. 2, c. 12. &c. as directs payment of wages to justices and their clerks repealed.*] And whereas by Acts of the twelfth and fourteenth years of King Richard the Second payments are provided for justices of the peace and their clerks in each county, as wages by the day for the time of their sessions, to be payable by the sheriff, as therein mentioned, and in several counties in England sums are claimed from the sheriffs and paid in respect of such statutory wages, and it is expedient that such payments should be discontinued: Be it therefore enacted, that so much of the several Acts of the twelfth year of King Richard the Second, chapter ten, and of the fourteenth year of King Richard the Second, chapter twelve, or of any other Act now in force as directs or authorizes the payment of wages to justices of the peace and their clerks for the time of their sessions, shall be repealed.

22. *In cases of injuries to property, parties aggrieved may receive compensation, though examined as witnesses.*] And whereas it is expedient to amend the law as to witnesses in cases of wilful or malicious injuries to property: Be it further enacted, that in all cases where any justice or justices of the peace have or shall hereafter have power to order a sum of money to be forfeited and paid to the party aggrieved, as amends or compensation for any injury to property, real or personal, the right of such party to receive the money so ordered to be paid shall not be affected by such party having been examined as a witness in proof of the offence, any law or statute to the contrary notwithstanding.

23. *Interpretation of terms.*] In the interpretation of this Act "county" shall be construed to include riding, parts, liberty, and division of a county; "borough" to include city, county of a city or town, and town corporate; "property" to include everything included under the words "chattel, money, or valuable security," as used in the Act of the session holden in the seventh and eighth years of King George the Fourth, chapter twenty-nine; and in the case of any "valuable security" the value of the share, interest, or deposit to which the security may relate, or of the money due thereon or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security.

24. *Extent of Act.*] This Act shall not extend to Scotland.

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## SCHEDULE.

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### A.

#### *Conviction.*

— } Be it remembered, that on the — day of — in the  
to wit. { year of our Lord —, at — in the said [county], A. B.,  
being charged before us the undersigned — of Her Majesty's



justices of the peace for the said [county], and consenting to our deciding upon the charge summarily, is convicted before us, for that [he the said *A. B.*, &c., *stating the offence, and the time and place when and where committed*]; and we adjudge the said *A. B.* for his said offence to be imprisoned in the [house of correction] at — in the said [county], [and there kept to hard labour] for the space of —.

Given under our hands and seals, the day and year first above mentioned, at — in the [county] aforesaid.

*J. S.* (L.S.)

*H. M.* (L.S.)

(B.)

### *Certificate of Dismissal.*

— } We — of Her Majesty's justices of the peace for the  
to wit. } [county] of — certify, that on the — day of —  
in the year of our Lord — at — in the said [county] *A. B.*  
being charged before us, and consenting to our deciding upon the  
charge summarily, for that [he the said *A. B.*, *stating the offence  
charged, and the time and place when and where alleged to be com-  
mitted*], we did, having summarily adjudicated thereon, dismiss the  
said charge.

Given under our hands and seals, this — day of — at — in  
the [county] aforesaid.

*J. S.* (L.S.)

*H. M.* (L.S.)

(C.)

### *Conviction upon a Plea of Guilty.*

— } Be it remembered, that on the — day of — in the  
to wit. } year of our Lord — at — in the said [county],  
*A. B.*, being charged before us, the undersigned — of Her Ma-  
jesty's justices of the peace for the said [county], for that [he the  
said *A. B.*, &c., *stating the offence, and the time and place when and  
where committed*], and pleading guilty to such charge, he is there-  
upon convicted before us of the said offence; and we adjudge the  
said *A. B.* for his said offence to be imprisoned in the [house of  
correction] at — in the said [county], [and there kept to hard  
labour] for the space of —.

Given under our hands and seals, the day and year first above  
mentioned, at — in the county aforesaid.

*J. S.* (L.S.)

*H. M.* (L.S.)



4. *Special case stated by Justices.*

*By stat. 20 & 21 Vict. c. 43,—An Act to improve the Administration of the Law so far as respects summary Proceedings before Justices of the Peace.*  
[17th August, 1857.]

Whereas it is expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Sect. 1. *Interpretation clause.*] In the interpretation and for the purposes of this Act, the following words shall have the meaning hereinafter assigned to them; that is to say,

"Superior courts of law" shall for England mean the supreme courts of law at Westminster, and for Ireland the supreme courts of law at Dublin:

"Court of Queen's Bench" shall mean for England the court of Queen's Bench at Westminster, and for Ireland the court of Queen's Bench at Dublin.

2. *When justices shall state a case for the opinion of the court.*] After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party, hereinafter called the "appellant," shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called the "respondent."

3. *Recognizance and notice.*] The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees,



except such as are already provided for by law, shall be according to the schedule to this Act annexed marked (A.), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute, eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall then be sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

4. *When justices may refuse it.*] If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of Her Majesty's attorney general for England or Ireland, as the case may be.

5. *When refused the court may order it.*] Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

6. *Judgment.*] The court to which a case is transmitted under this Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

7. *Case when amended.*] The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

8. *Or it may be decided by a judge at chambers.*] The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this Act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.



9. *After the decision justices may issue warrants.* After the decision of the superior court in relation to any case stated for their opinion under this Act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively.

10. *Certiorari not necessary.*] No writ of *certiorari* or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this Act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this Act.

11. *Rules.*] The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

12. *"Justices" to include stipendiary magistrates.*] The words "justice or justices" in this Act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate.

13. *Recognizances how enforced.*] In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: Provided, that where any such recognizances shall have been taken in England before a magistrate of the police courts of the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on nonpayment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an Act passed in the second and third years of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this Act, in as ample a manner as if they had been herein re-enacted and made part of the same.

14. *Appellant not to appeal to quarter sessions.*] Any person who shall appeal under the provisions of this Act against any deter-



mination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

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## SCHEDULE.

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### (A.)

#### *Fees to be taken by Clerks to Justices.*

|                                                                                                      | s. | d. |
|------------------------------------------------------------------------------------------------------|----|----|
| For drawing case and copy, where the case does not exceed five folios of ninety words each - - - - - | 10 | 0  |
| Where the case exceeds five folios, then for every additional folio - - - - -                        | 1  | 0  |
| For the recognizance to be taken in pursuance of the Act -                                           | 5  | 0  |
| For every enlargement or renewal thereof - - - - -                                                   | 2  | 6  |
| For certificate of refusal of case - - - - -                                                         | 2  | 0  |

*By stat. 20 & 21 Vit. c. 85,—An Act to amend the Law relating to Divorce and Matrimonial Causes in England.*

[28th August, 1855.]

Sect. 21. *Wife deserted by her husband may apply to a police magistrate or justices in petty sessions for protection as regards after acquired property.*] A wife deserted by her husband may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or, if resident in the country, to justices in petty sessions, or in either case to the court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband or his creditors or any person claiming under him; and such magistrate or justices or court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion, from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole*: provided always, that every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days after the making thereof, be entered with the registrar of the county court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the court, or to the magistrate or justices by whom such order was made for the discharge thereof: provided also, that if the husband or any creditor or person claiming under the husband,



shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable at the suit of the wife (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid: if any such order of protection be made, the wife shall during the continuance thereof be and be deemed to have been, during such desertion of her, in the like position in all respects with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a degree of judicial separation.

*By stat. 21 & 22 Vict. c. 68,—An Act to amend the Law concerning detached Parts of Counties.* [2d August 1858.]

Whereas by an Act passed in the session holden in the second and third years of Her Majesty, chapter ninety-three, "for the establishment of County and District Constables by the Authority of Justices of the Peace," it was enacted that for the purposes of that Act all detached parts of counties should be considered as forming part of that county by which they were surrounded, and if partly surrounded by two or more counties, then as forming part of that county with which they had the longest common boundary, and so much of every such detached part of any county which was not of itself an entire hundred, wapentake, ward, rape, lathe, or such other division of a county, should be considered as forming part of that hundred, ward, wapentake, rape, lathe, or such other division whereby it should be surrounded, in the county of which it should be considered a part, for the purposes of that Act, or if partly surrounded by two or more hundreds, wapentakes, wards, rapes, lathes, or such other divisions, then as forming part of that one with which it should have the longest common boundary; And whereas by an Act passed in the session holden in the third and fourth years of Her Majesty, chapter eighty-eight, to amend the firstly herein recited Act, it was enacted, that it should be lawful for the justices of any two or more neighbouring counties, in their several general or quarter sessions assembled, from time to time to agree that such parts of their several counties as to them should seem fit should for the purposes of the firstly herein recited Act be considered as forming part of any other of the said counties; and whenever any such district should be so transferred for the purposes of the said Act from one county to another, with the consent of the justices of both the last mentioned counties, such district should be considered for the purposes of the said Act as if it were detached from the county to which it belonged, and wholly surrounded by the county to which it was so transferred: And whereas by an Act passed in the session holden in the seventh and eighth years of Her Majesty, chapter sixty-one, it was enacted, that every part of any county in England or Wales which was detached from the main body of such county should be considered for all purposes as forming part of that county of which it was considered a part for the purposes of the election of members to serve in parliament as knights of the shire, under the provisions of an Act passed



in the third year of the reign of His late Majesty, intituled "An Act to settle and to describe the Divisions of Counties, and the Limits of Cities and Boroughs, in England and Wales, in so far as respects the Election of Members to serve in Parliament:" And whereas several parts of counties which before the passing of the said Act of the seventh and eighth years of Her Majesty were detached from the main bodies of such counties are also detached from the main bodies of the counties of which under that Act they respectively form parts, or may be conveniently united with other counties: And whereas it is expedient to make such provision as hereinafter mentioned in relation to detached parts of counties: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, as follows:

1. *Detached parts of counties may be transferred for the purposes of the constabulary.*] It shall be lawful for the justices of any two or more neighbouring counties, in their several general or quarter sessions assembled, notwithstanding the said Act of the seventh and eighth years of Her Majesty, from time to time to agree that any detached part of any county shall for the purposes of the Acts relating to county and district constables be considered as forming part of the county by which the same is surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which such part has the longest common boundary; and whenever any part of any county is so transferred, such part shall be subject to the provisions of the said Acts of the second and third years and of the third and fourth years of Her Majesty concerning detached parts of counties, as the same would have been if the said Act of the seventh and eighth years of Her Majesty had not been passed.

2. *Recited provision of 3 & 4 Vict. c. 88, to extend to parts annexed under 7 & 8 Vict. c. 61.*] The provisions hereinbefore recited of the said Act of the third and fourth years of Her Majesty shall extend to any part of a county which did not form part of such county before the passing of the said Act of the seventh and eighth years of Her Majesty in like manner as if the same had always formed part of such county.

3. *Power to contract for care of prisoners.*] Where any agreement is made as aforesaid in relation to any detached part of a county, the justices entering into such agreement may, with the approval of one of Her Majesty's principal secretaries of state, also agree for the support and maintenance in any gaol or house of correction belonging to the county to which such detached part is assigned under such agreement of any prisoners committed thereto from such detached part, and for the payment, where the occasion shall require, of all or any part of the expenses of additions or alterations of or to such gaol or house of correction which may be required by reason of the commitment of such prisoners thereto; and every prisoner committed from such detached part who would or might otherwise be confined in the gaol or house of correction of the county to which such detached part belongs, may be lawfully committed or removed to and confined in the gaol or house of cor-



rection receiving him under such agreement; and all prisoners so confined in such gaol or house of correction, whether before or after trial shall be subject in all matters and things to the same rules and regulations as if they were committed to such gaol or house of correction by any of the justices having jurisdiction over the same, and if committed before trial shall be triable and tried in the same manner as if their offences had been committed in the county to which such gaol or house of correction belongs; and the monies to be paid under such agreement for the support and maintenance of such prisoners, and other such expenses as aforesaid, shall be raised in the same manner as monies for defraying the expenses of any gaol or house of correction of the county to which such detached part belongs, to which such prisoners would or might have been committed if such agreement had not been made.

*By stat. 21 & 22 Vict. c. 73,—An Act to amend the Law concerning the Powers of Stipendiary Magistrates and Justices of the Peace in certain Cases,—it is enacted:—*

[2nd August, 1858.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same as follows:

1. Every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district, sitting at a police court or other place appointed in that behalf, shall have power to do alone any Act and to exercise alone any jurisdiction which under any law now in force, or under any law not containing an express enactment to the contrary hereafter to be made, may be done or exercised by two justices of the peace, and all the provisions of any Act of parliament auxiliary to the jurisdiction of such justices shall be applicable also to the jurisdiction of such stipendiary magistrate.

2. The authority and jurisdiction given to a stipendiary magistrate by the enactment hereinbefore contained shall extend and apply as well to the cases where the Act or jurisdiction is or hereafter may be expressly required to be done or exercised by justices sitting or acting in petty sessions as to other cases, and any enactment authorizing or requiring persons to be summoned or to appear at such petty sessions shall in the like cases authorize or require persons to be summoned or to appear before the stipendiary magistrate having jurisdiction at the police court or other place appointed for his sitting.

3. Nothing hereinbefore contained shall extend to acts to be done or jurisdiction to be exercised at the general or quarter sessions of the peace, or to acts or jurisdiction expressly required (by any existing or future law) to be done or exercised at special sessions, or to any act or jurisdiction in relation to the grant or transfer of any licence.

4. Nothing hereinbefore contained shall extend, alter, or affect in any manner the powers or authorities of the magistrates appointed or to be appointed to the police courts in the metropolitan police district.



5. Section twenty-two of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three, shall extend and be deemed to have extended to all cases in which it is returned to a warrant of distress issued under the authority of such Act for levying any penalty, compensation, or sum of money adjudged or ordered to be paid by any conviction or order that no sufficient goods of the party against whom such warrant was issued can be found, where the statute on which the conviction or order is founded provides no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing payment of the same, as well as to cases where the statute on which the conviction or order is founded authorizes the issuing thereon of a warrant of distress.

6. So much of section eighteen of the Act of the session holden in the second and third years of her Majesty, chapter seventy-one, as makes void (except in the cases therein excepted) "every summons or warrant issued by any justice of the peace of the counties of Middlesex, Surrey, Kent, Essex, or Hertfordshire respectively, requiring any person residing within the metropolitan police district to appear at any place without the said district to answer any information or complaint touching any matter arising within the said district," shall not apply to any such summons or warrant in respect of any matter arising within any part of the said district not assigned for the time being to any of the police courts of the metropolis.

7. In every case in which any person shall be brought before any police magistrate, or any two magistrates acting within the said metropolitan police district, for any place within which no police court shall have been established, for any offence under the twenty-fourth section of an Act of the session holden in the second and third years of Her Majesty, chapter seventy-one, such police magistrate, or such magistrates acting in and for such place, may hear and determine the matter, and in case of conviction may commit the offender to be imprisoned in any gaol or house of correction in and for the county, liberty, or place in which such offence shall have been committed, though not within the said metropolitan police district, and with or without hard labour for any time not exceeding two calendar months, and in their discretion without the infliction of any fine in default of payment of which such imprisonment might be adjudged.

But now, by stat. 21, & 22, Vict. c. 73, s. 8, the above stat. 59. G. 3, c. 28, and the above-mentioned sections of stat. 7 W. 4, and 4 Vict. c. 19, and 5 & 6 Vict. c. 38 are repealed, but not so as to affect any orders, rules, and regulations made before the passing of this Act.

And by the same statute, 21 & 22 Vict. c. 73, s. 9, whenever and so often as any court of quarter sessions or general sessions or adjourned quarter sessions of the peace is assembled for the despatch of business, the justices then present may, if and when in their discretion they see fit so to do, appoint two or more justices one of whom shall be of the quorum, to form a second court for the purpose of hearing and determining such business as may be referred to them, and the proceedings by and before such second court shall be as good and effectual in the law, to all intents and purposes, as if the same were had before the court assembled and sitting as usual



in its ordinary place of sitting, and shall be enrolled and recorded accordingly.

By sect. 10, when a second court is formed as aforesaid, and orders, rules, and regulations have been made for the apportionment of business, such orders, rules, and regulations shall continue in force as long as may be thought expedient, without the necessity of renewing such orders, rules, and regulations, at each succeeding session.

By sect. 11, the clerk of the peace or his deputy, wherever a second court is formed as aforesaid, shall appoint a fit and sufficient person to record the proceedings so had before the justices at such second court, and such proceedings shall be delivered over to the clerk of the peace or his deputy, and shall be deemed to be a part of the records of the session, as if the same proceedings had been recorded by the clerk of the peace himself; and it shall be lawful for the justices assembled at the sessions to make an order upon the treasurer of the county to pay to the clerk of the peace such sum as they shall deem a fit and reasonable remuneration to the clerk of the peace for such purpose as aforesaid: and it shall be lawful for such justices to appoint an additional crier, and to grant him such remuneration (to be paid by the treasurer of the county) as they deem reasonable.

And by sect. 12, every sentence pronounced by any court of general or quarter sessions or adjourned sessions of the peace shall take effect from the time of the same being pronounced, unless the court otherwise directs.

13. It shall be lawful for any stipendiary magistrate with the approval of the secretary of state for the home department, to appoint a deputy, who shall have practised as a barrister-at-law for at least seven years, to act for him for any time or times not exceeding six weeks in any consecutive period of twelve calendar months; and every deputy so appointed during the time for which he shall be so appointed, shall have all the powers and perform all the duties of the stipendiary magistrate for whom he shall have been so appointed.

14. It shall be lawful for Her Majesty to appoint any stipendiary magistrate acting for any city, town, liberty, borough, or place in England or Wales to be a magistrate of any one of the police courts of the metropolitan police district, although such stipendiary magistrate shall not have practised as a barrister during at least seven years then last past, nor shall have practised as a barrister for four years then last past having previously practised as a certificated special pleader for three years below the bar.

15. This Act shall extend only to England.

*By stat. 21 & 22 Vict. c. 108,—An Act to amend the Act of the twentieth and twenty-first Victoria, cap. 85,—it is enacted:—*  
[2nd August, 1858.]

Sect. 8. *Order for protection of earnings, &c., of wife to be deemed valid.*] In every case in which a wife shall under this Act or under the said Act of the twentieth and twenty-first Victoria, chapter



eighty-five, have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual; and no discharge, variation, or reversal of such order or decree shall prejudice or affect any rights or remedies, which any person would have had in case the same had not been so reversed, varied, or discharged in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the making such order or decree and of the discharge, variation, or reversal thereof: and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree (as the case may be), shall be deemed to be included in the protection given by the order or decree.

9. *Order to state the time at which the desertion commenced.*] Every order which shall be obtained by a wife under the said Act of the twentieth and twenty-first Victoria, chapter eighty-five, or under this Act, for the protection of her earnings or property, shall state the time at which the desertion in consequence whereof the order is made commenced; and the order shall, as regards all persons dealing with such wife in reliance thereon, be conclusive as to the time when such desertion commenced.

INDICTABLE OFFENCES







APPENDIX

A TABLE

TABLE

OF

INDICTABLE OFFENCES.



TABLE

INDICTABLE OFFENCES



# APPENDIX.

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## A TABLE

OF

## ALL INDICTABLE OFFENCES,

WITH

## THEIR PUNISHMENTS, &c.

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NOTE.—In the column “Penal Servitude” in this table, the punishment of penal servitude is stated, wherever the statute creating or punishing the offence directed it. By stat. 20 & 21 Vict. c. 3, s. 2, (after reciting and repealing a part of stat. 16 & 17 Vict. c. 99), it is enacted that no person shall be sentenced to transportation; and any person who, if this Act and the said Act had not been passed, might have been sentenced to transportation, shall, after the commencement of this Act, be liable to be sentenced to be kept in penal servitude for a term of the same duration as the term of transportation to which such person would have been liable if the said Act and this Act had not been passed; and in every case where, at the discretion of the court, one of any two or more terms of transportation might have been awarded, the court shall have the like discretion to award one of any two or more of the terms of penal servitude which are hereby authorized to be awarded instead of such terms of transportation: Provided always, that any person who might at the discretion of the court have been sentenced either to transportation for any term or to any period of imprisonment, shall be liable at the discretion of the court to be sentenced either to penal servitude for the same term or to the same period of imprisonment; and in any case in which before the passing of the said Act sentence of seven years transportation might have been passed, it shall be lawful for the court in its discretion to pass a sentence of penal servitude of not less than three years.



| OFFENCE.                                                                               | Felony<br>or Misdemeanor.         | Statute.                  |
|----------------------------------------------------------------------------------------|-----------------------------------|---------------------------|
| <b>Abduction.</b>                                                                      |                                   |                           |
| 1. Forcible abduction from motives of lucre                                            | Felony .....                      | 9 G. 4, c. 31, s. 19 ..   |
| 2. Abduction of a girl under 16 years                                                  | Misdemeanor ....                  | Id. s. 20 .....           |
| <b>Abortion.</b>                                                                       |                                   |                           |
| 1. By administering drugs.....                                                         | Felony .....                      | 1 Vict. c. 85, s. 6 ..    |
| 2. By using instruments.....                                                           | Same .....                        | Id. ....                  |
| <b>Accessory and Principal.</b>                                                        |                                   |                           |
| Principal in second degree ....                                                        | Same as principal in first degree | .....                     |
| Accessory before the fact, in felony                                                   | Same as principal                 | 11 & 12 Vict. c. 46, s. 1 |
| In treason and misdemeanors all are principals                                         |                                   |                           |
| Accessory after the fact, in felony                                                    | Felony .....                      | .....                     |
| In treason all are principals; in misdemeanor, accessory after the fact not punishable |                                   |                           |
| <b>Accusing of Crime.</b>                                                              |                                   |                           |
| 1. Letter accusing or threatening to accuse, &c., with intent to extort                | Felony .....                      | 10 & 11 Vict. c. 66, s. 1 |
| 2. Accusing or threatening to accuse, with intent to extort                            | Felony .....                      | Id. s. 2.....             |
| 3. Accusing or threatening, and thereby extorting                                      | Felony .....                      | 1 Vict. c. 87, s. 4 ..    |
| 4. Threatening to publish libel, &c. with intent to extort                             | Misdemeanor ....                  | 6 & 7 Vict. c. 96, s. 3   |
| <b>Affray</b> .....                                                                    | Misdemeanor ....                  | C. L.; 2 Ed. 3, c. 3 ..   |
| <b>Agent, Banker, &amp;c.</b>                                                          |                                   |                           |
| 1. Embezzlement of money by                                                            | Misdemeanor ....                  | 7 & 8 G. 4, c. 29, s. 49  |



| Penal Servitude.                                          | Imprisonment, &c.                                                                                        | Where to be tried.             | Costs.           |
|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------|------------------|
| For life, or not less than 3 years<br>.....               | Or imp. h. l. for not more than 4 years<br>Fine or imp. or both                                          | Assizes<br>Assizes             | Costs.<br>Costs. |
| For life, or not less than 15 years<br>Same .....         | Or imp. h. l. for not more than 3 years<br>Same .....                                                    | Assizes<br>Assizes             | Costs.<br>Costs. |
| Same as principal in first degree<br>Same as principal .. | Same as principal in first degree<br>Same as principal ..                                                | .....<br>.....                 | Costs.<br>Costs. |
| Various .....                                             | Various .....                                                                                            | .....                          | Costs.           |
| For life, or not less than 3 years<br>Same .....          | Or imp. h. l. for not more than 4 years<br>Same .....                                                    | Assizes<br>Assizes             | Costs.<br>Costs. |
| For life, or not less than 15 years<br>.....<br>.....     | Or imp. h. l. for not more than 3 years<br>Imp. h. l. for not more than 3 years<br>Imp. or fine, or both | Assizes<br>Assizes<br>Sessions | Costs.           |
| For not more than 14 years nor less than 3                | Or fine, or imp. h. l.                                                                                   | Sessions                       |                  |



| OFFENCE.                                                   | Felony<br>or Misdemeanor. | Statute.                     |
|------------------------------------------------------------|---------------------------|------------------------------|
| <b>Agent, Banker, &amp;c.—continued.</b>                   |                           |                              |
| 2. Selling, &c. chattels or securities intrusted to him    | Misdemeanor . . . .       | 7 & 8 G. 4, c. 29, s. 49     |
| 3. Factor pledging, &c. the property of his principal      | Misdemeanor . . . .       | Id. s. 51 . . . . .          |
| 4. The like offence under 5 & 6 Vict. c. 39, s. 6          | Misdemeanor . . . .       | 5 & 6 Vict. c. 39, s. 6      |
| 5. Frauds by trustees . . . . .                            | Misdemeanor . . . .       | 20 & 21 V. c. 54, s. 1       |
| 6. Frauds by bankers, brokers, agents, &c.                 | Misdemeanor . . . .       | Id. s. 2 . . . . .           |
| 7. Frauds under powers of attorney.                        | Misdemeanor . . . .       | Id. s. 3 . . . . .           |
| 8. Frauds by bailees . . . . .                             | Larceny . . . . .         | Id. s. 4 . . . . .           |
| 9. Frauds by directors, &c. of public company.             | Misdemeanor . . . .       | Id. s. 5 . . . . .           |
| 10. Frauds in keeping fraudulent accounts                  | Misdemeanor . . . .       | Id. s. 6 . . . . .           |
| 11. Frauds in wilfully destroying books, &c.               | Misdemeanor . . . .       | Id. s. 7 . . . . .           |
| 12. Frauds in publishing fraudulent statements             | Misdemeanor . . . .       | Id. s. 8 . . . . .           |
| 13. Frauds, receivers of property fraudulently disposed of | Misdemeanor . . . .       | Id. s. 9 . . . . .           |
| <b>Arms, Training to the Use of.</b>                       |                           |                              |
| 1. Training . . . . .                                      | Misdemeanor . . . .       | 60 G. 3 & 1 G. 4, c. 1, s. 1 |
| 2. Being trained . . . . .                                 | Misdemeanor . . . .       | Id. . . . .                  |
| 3. Dispersing such meeting . . . . .                       | . . . . .                 | Id. s. 2.                    |
| <b>Assault.</b>                                            |                           |                              |
| 1. Common assault and battery                              | Misdemeanor . . . .       | C. L. . . . .                |
| 2. Upon justices, &c. in case of wreck                     | Misdemeanor . . . .       | 9 G. 4, c. 31, s. 24..       |
| 3. Upon peace or revenue officers                          | Misdemeanor . . . .       | Id. s. 25 . . . . .          |
| 4. To prevent apprehension . . . .                         | Misdemeanor . . . .       | Id. s. 25 . . . . .          |
| 5. In pursuance of conspiracy to raise wages               | Misdemeanor . . . .       | Id. s. 25 . . . . .          |



| Penal Servitude.                           | Imprisonment, &c.                             | Where to be tried. | Costs.                                   |
|--------------------------------------------|-----------------------------------------------|--------------------|------------------------------------------|
| For not more than 14 years nor less than 3 | Or fine, or imp. h. l.                        | Sessions           |                                          |
| Same .....                                 | Same .....                                    | Sessions           |                                          |
| Same .....                                 | Same .....                                    | Sessions           |                                          |
| 3 years.....                               | Or imp. h. l. 2 years or fine                 | Assizes.           | Costs                                    |
| Same .....                                 | Same .....                                    | Same               | Same                                     |
| Same .....                                 | Same .....                                    | Same               | Same                                     |
| .....                                      | Or imp. h. l. for not less than 2 years       | Same               | Same                                     |
| 3 years.....                               | Or imp. h. l. 2 years or fine                 | Same               | Same                                     |
| Same .....                                 | Same .....                                    | Same               | Same                                     |
| Same .....                                 | Same .....                                    | Same               | Same                                     |
| Same .....                                 | Same .....                                    | Same               | Same                                     |
| Same .....                                 | Same .....                                    | Same               | Same                                     |
| Not more than 7, nor less than 3 years     | Or imp: not more than 2 years                 | Sessions           |                                          |
| .....                                      | Fine, and imp. not more than 2 years          | Sessions           |                                          |
| .....                                      | .....                                         | .....              | .....                                    |
| .....                                      | Fine or imp. or both                          | Sessions           | Costs, if JJ. bind over to the sessions. |
| Not more than 7, nor less than 3 years.    | Or imp. h. l. ....                            | Sessions           |                                          |
| .....                                      | Or imp. h. l. not more than 2 years, and fine | Sessions           | Costs.                                   |
| .....                                      | Same .....                                    | Sessions           |                                          |
| .....                                      | Same .....                                    | Sessions           | Costs.                                   |



| OFFENCE.                                                                    | Felony<br>or Misdemeanor. | Statute.                        |
|-----------------------------------------------------------------------------|---------------------------|---------------------------------|
| 6. With intent to commit a felony                                           | Misdemeanor ....          | Id. s. 25 .....                 |
| 7. Indecent assaults .....                                                  | Misdemeanor ....          | C. L. ....                      |
| <b>Attempt to Murder.</b>                                                   |                           |                                 |
| 1. By poison .....                                                          | Felony .....              | 1 Vict. c. 85, s. 2....         |
| 2. By stabbing, cutting or wound-<br>ing                                    | Felony .....              | Id. ....                        |
| 3. By attempting to shoot.....                                              | Felony .....              | Id. s. 3.....                   |
| 4. By attempting to drown, suf-<br>focate, &c.                              | Felony .....              | Id. s. 3.....                   |
| <b>Attempt to do Bodily In-<br/>jury.</b>                                   |                           |                                 |
| 1. By shooting or attempting to<br>shoot, or by cutting or<br>wounding, &c. | Felony .....              | 1 Vict. c. 85, s. 4 ..          |
| 2. Doing bodily injury with or<br>without weapon, or cutting<br>or wounding | Misdemeanor ....          | 14 & 15 Vict. c. 19,<br>s. 4    |
| 3. By explosive substances or<br>corrosive liquids                          | Felony .....              | 9 & 10 Vict. c. 25,<br>ss. 3, 4 |
| <b>Attempts to Commit other<br/>Offences.</b>                               | Misdemeanor ....          | C. L. ....                      |
| <b>Bankrupt, Frauds by.</b>                                                 |                           |                                 |
| 1. Not surrendering .....                                                   | Felony .....              | 12 & 13 Vict. c. 106,<br>s. 251 |
| 2. Not discovering his estate, &c.                                          | Felony .....              | Id. ....                        |
| 3. Not delivering up his goods,<br>books, &c.                               | Felony .....              | Id. ....                        |
| 4. Concealing or embezzling to<br>the value of £10                          | Felony .....              | Id. ....                        |
| <b>Barratry.</b> .....                                                      | Misdemeanor ....          | C. L. ....                      |
| <b>Bigamy.</b> .....                                                        | Felony .....              | 9 G. 4, c. 31, s. 22..          |
| <b>Blasphemy and Profane-<br/>ness.</b>                                     |                           |                                 |
| Blasphemy .....                                                             | Misdemeanor ....          | C. L. ....                      |
| Scoffing at scripture .....                                                 | Misdemeanor ....          | C. L. ....                      |
| Blasphemous libel .....                                                     | Misdemeanor ....          | C. L. ....                      |



| Penal Servitude.                    | Imprisonment, &c.                       | Where to be tried. | Costs.                               |
|-------------------------------------|-----------------------------------------|--------------------|--------------------------------------|
| .....                               | Same .....                              | Sessions           | Costs.                               |
| .....                               | Fine or imp. or both                    | Sessions           |                                      |
| Death .....                         | .....                                   | Assizes            | Costs.                               |
| Death .....                         | .....                                   | Assizes            | Costs.                               |
| For life, or not less than 15 years | Or imp. h. l. not more than 3 years     | Assizes            | Costs.                               |
| Same .....                          | Same .....                              | Assizes            | Costs.                               |
| For life, or not less than 15 years | Or imp. h. l. for not more than 3 years | Assizes            | Costs.                               |
| .....                               | Same .....                              | Sessions           | Costs.                               |
| Same .....                          | Same .....                              | Assizes            | Costs.                               |
| .....                               | Fine or imp. or both                    | Sessions           | Costs, if attempt to commit a felony |
| For life, or not less than 3 years  | Or imp. h. l. for not more than 7 years | Assizes            | Costs.                               |
| Same .....                          | Same .....                              | Assizes            | Costs.                               |
| Same .....                          | Same .....                              | Assizes            | Costs.                               |
| Same .....                          | Same .....                              | Assizes            | Costs.                               |
| .....                               | Fine, imprisonment or both              | Sessions           |                                      |
| For 7, or not less than 3 years     | Or imp. h. l. for not more than 2 years | Assizes            | Costs.                               |
| .....                               | Fine, imprisonment or both              | Assizes            |                                      |
| .....                               | Same .....                              | Assizes            |                                      |
| .....                               | Same .....                              | Assizes            |                                      |



| OFFENCE.                                                        | Felony<br>or Misdemeanor. | Statute.                                         |
|-----------------------------------------------------------------|---------------------------|--------------------------------------------------|
| <b>Bribery.</b>                                                 |                           |                                                  |
| Bribery at common law .....                                     | Misdemeanor .....         | C. L. ....                                       |
| Bribery at elections .....                                      | Misdemeanor .....         | 17 & 18 Vict. c. 102,<br>s. 2                    |
| Being bribed .....                                              | Misdemeanor .....         | Id. s. 3 .....                                   |
| Using intimidation, &c. ....                                    | Misdemeanor .....         | Id. s. 5 .....                                   |
| <b>Bridges.</b>                                                 |                           |                                                  |
| Not repairing them .....                                        | Misdemeanor .....         | 22 H. 8, c. 5                                    |
| Destroying or damaging them                                     | Felony .....              | 7 & 8 G. 4, c. 30, s. 13                         |
| <b>Burglary and Housebreak-<br/>ing.</b>                        |                           |                                                  |
| 1. Burglary .....                                               | Felony .....              | 1 Vict. c. 86, s. 3 ..                           |
| 2. Burglary and attempt to<br>murder                            | Felony .....              | Id. s. 2 .....                                   |
| 3. Burglary by breaking out of<br>a house                       | Felony .....              | 7 & 8 G. 4, c. 29, s. 11;<br>1 Vict. c. 86, s. 3 |
| 4. Breaking and entering a church<br>or chapel                  | Felony .....              | 7 & 8 G. 4, c. 29, s. 10                         |
| 5. Housebreaking and stealing                                   | Felony .....              | 7 & 8 G. 4, c. 29, s. 12;<br>1 Vict. c. 90, s. 1 |
| 6. Breaking and entering a build-<br>ing within the curtilage   | Felony .....              | 7 & 8 G. 4, c. 29, s. 14;<br>1 Vict. c. 90, s. 2 |
| 7. Breaking and entering a shop,<br>warehouse, &c. and stealing | Felony .....              | 7 & 8 G. 4, c. 29, s. 15;<br>1 Vict. c. 90, s. 2 |
| 8. Being armed, &c., with intent<br>to break and enter          | Misdemeanor ....          | 14 & 15 Vict. c. 19,<br>s. 1                     |
| <b>Burning.</b>                                                 |                           |                                                  |
| 1. Church or chapel .....                                       | Felony .....              | 1 Vict. c. 89, s. 3 ..                           |
| 2. Dwelling-house, any person<br>being therein                  | Felony .....              | Id. s. 2 .....                                   |
| 3. House, outhouse, manufac-<br>tory, &c.                       | Felony .....              | Id. s. 3 .....                                   |
| 4. Farm buildings .....                                         | Felony .....              | 7 & 8 Vict. c. 62, s. 1                          |
| 5. Hay, straw, implements, &c.<br>in farm buildings             | Felony .....              | Id. s. 3 .....                                   |
| 6. Stacks of corn, hay, wood,<br>&c.                            | Felony .....              | 1 Vict. c. 89, s. 10 ..                          |
| 7. Crops of corn or pulse, trees,<br>furze, &c.                 | Felony .....              | 7 & 8 G. 4, c. 30,<br>s. 17                      |
| 8. Coal mines .....                                             | Felony .....              | 1 Vict. c. 89, s. 9 ..                           |



| Penal Servitude.                            | Imprisonment, &c.                       | Where to be tried. | Costs. |
|---------------------------------------------|-----------------------------------------|--------------------|--------|
| .....                                       | Same .....                              | Assizes            |        |
| .....                                       | Fine and imprisonment                   | Assizes            | Costs. |
| .....                                       | Same .....                              | Assizes            | Costs. |
| .....                                       | Same .....                              | Assizes            | Costs. |
| For life, or not less than 3 years          | Or imp. h. l. for not more than 4 years | Assizes            | Costs. |
| For life, or not less than 10 years         | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| Death .....                                 | .....                                   | Assizes            | Costs. |
| For life, or not less than 10 years         | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| For life, or not less than 3 years          | Same .....                              | Assizes            | Costs. |
| For not more than 15 years nor less than 10 | Same .....                              | Sessions           | Costs. |
| Same .....                                  | Same .....                              | Sessions           | Costs. |
| Same .....                                  | Same .....                              | Sessions           | Costs. |
| .....                                       | Same .....                              | Sessions           |        |
| For life, or not less than 15 years         | Same .....                              | Assizes            | Costs. |
| Death .....                                 | .....                                   | Assizes            | Costs. |
| For life, or not less than 15 years         | Same .....                              | Assizes            | Costs. |
| Same .....                                  | Same .....                              | Assizes            | Costs. |
| Same .....                                  | Same .....                              | Assizes            | Costs. |
| Same .....                                  | Same .....                              | Assizes            | Costs. |
| For 7, or not less than 3 years             | Or imp. h. l. for not more than 2 years | Assizes            | Costs. |
| For life, or not less than 15 years         | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |



| OFFENCE.                                              | Felony<br>or Misdemeanor. | Statute.                                            |
|-------------------------------------------------------|---------------------------|-----------------------------------------------------|
| 9. Ships, whereby life endangered, &c.                | Felony .....              | 1 Vict. c 89, s. 9....                              |
| 10. Ships, to prejudice owner or underwriters         | Felony .....              | Id. s. 6.....                                       |
| <b>Buying of Titles</b> .....                         | Misdemeanor ....          | C.L. and 32 H. 8,<br>c. 9                           |
| <b>Carnally Knowing Female Children.</b>              |                           |                                                     |
| 1. Under ten .....                                    | Felony .....              | 9 G. 4, c. 31, s. 17;<br>4 & 5 Vict. c. 56,<br>s. 3 |
| 2. Above 10 and under 12 ....                         | Misdemeanor ....          | 9 G. 4, c. 31, s. 17..                              |
| <b>Cattle.</b>                                        |                           |                                                     |
| 1. Stealing, or killing with intent to steal          | Felony .....              | 7 & 8 G. 4, c. 29, s.<br>25; 1 Vict. c. 90,<br>s. 1 |
| 2. Maliciously killing or wounding                    | Felony .....              | 7 & 8 G. 4, c. 30, s.<br>16; 1 Vict. c. 90,<br>s. 2 |
| <b>Challenge to Fight</b> .....                       | Misdemeanor ....          | C.L. ....                                           |
| Provoking a person to send a challenge                | Misdemeanor ....          | C.L. ....                                           |
| <b>Child Stealing</b> .....                           | Felony .....              | 9 G. 4, c. 31, s. 21..                              |
| <b>Clergymen, Arresting</b> ....                      | Misdemeanor ....          | Id. s. 23 .....                                     |
| <b>Coin.</b>                                          |                           |                                                     |
| 1. Counterfeiting gold or silver coin                 | Felony .....              | 2 W. 4, c. 34, s. 3 ..                              |
| 2. Gilding or silvering coin ..                       | Felony .....              | Id. s. 4.....                                       |
| 3. Impairing the coin .....                           | Felony .....              | Id. s. 5 .....                                      |
| 4. Buying, selling or importing counterfeit coin      | Felony .....              | Id. s. 6 .....                                      |
| 5. Uttering counterfeit coin ..                       | Misdemeanor ....          | Id. s. 7 .....                                      |
| 6. Uttering, and having other base coin in possession | Misdemeanor ....          | Id. s. 7 .....                                      |



| Penal Servitude.                            | Imprisonment, &c.                            | Where to be tried. | Costs. |
|---------------------------------------------|----------------------------------------------|--------------------|--------|
| Death .....                                 | .....                                        | Assizes            | Costs. |
| For life, or not less than 15 years         | Or imp. h. l. for not more than 3 years      | Assizes            | Costs. |
| .....                                       | Fine or imprisonment or both, and forfeiture | Sessions           |        |
| For life .....                              | .....                                        | Assizes            | Costs. |
| .....                                       | Imp. h. l. ....                              | Sessions           | Costs. |
| For not more than 15 years nor less than 10 | Or imp. h. l. for not more than 3 years      | Sessions           | Costs. |
| For not more than 15 years nor less than 3  | Same .....                                   | Sessions           | Costs. |
| .....                                       | Fine or imp. or both                         | Sessions           |        |
| .....                                       | Same .....                                   | Sessions           |        |
| For 7, or not less than 3 years             | Or imp. h. l. for not more than 2 years      | Sessions           | Costs. |
| .....                                       | Fine or imp. or both                         | Sessions           |        |
| For life, or not less than 3 years          | Or imp. h. l. for not more than 4 years      | Assizes            | Costs. |
| Same .....                                  | Same .....                                   | Assizes            | Costs. |
| For not more than 14 years nor less than 3  | Or imp. h. l. for not more than 3 years      | Sessions           | Costs. |
| For life, or not less than 3 years          | Or imp. h. l. for not more than 4 years      | Assizes            | Costs. |
| .....                                       | Imp. h. l. for not more than 1 year          | Sessions           |        |
| .....                                       | Imp. h. l. for not more than 2 years         | Sessions           |        |



| OFFENCE.                                         | Felony<br>or Misdemeanor. | Statute.                 |
|--------------------------------------------------|---------------------------|--------------------------|
| <b>Coin—continued.</b>                           |                           |                          |
| 7. Uttering twice within ten days                | Misdemeanor ....          | 2 W. 4, c. 34, s. 7 ..   |
| 8. Uttering after a former conviction            | Felony .....              | Id. s. 7 .....           |
| 9. Having such coin, with intent to utter it     | Misdemeanor ....          | Id. s. 8 .....           |
| Same, 2nd offence .....                          | Felony .....              | Id. s. 8 .....           |
| 10. Counterfeiting, &c., copper coins, &c.       | Felony .....              | Id. s. 12 .....          |
| 11. Uttering base copper coin ..                 | Misdemeanor ....          | Id. s. 12 .....          |
| 12. Making or having, &c. coining tools, &c.     | Felony .....              | Id. s. 10 .....          |
| 13. Conveying tools, &c. out of the Mint         | Felony .....              | Id. s. 11 .....          |
| 14. Accessories, &c.                             |                           |                          |
| <b>Compounding Felony, &amp;c.</b>               | Misdemeanor ....          | C. L. ....               |
| Compounding penal actions....                    | Misdemeanor ....          | 56 G. 3, c. 138, s. 2    |
| Taking reward for helping to stolen goods        | Felony .....              | 7 & 8 G. 4, c. 29, s. 58 |
| <b>Concealing Birth</b> .....                    | Misdemeanor ....          | 9 G. 4, c. 31, s. 14..   |
| <b>Conspiracy</b> .....                          | Misdemeanor ....          | C. L. ....               |
| <b>Cruelty to Apprentices, Servants, &amp;c.</b> | Misdemeanor ....          | 14 Vict. c. 11, ss. 7, 6 |
| <b>Dead Body, Disinterring or Selling</b>        | Misdemeanor ....          | C. L. ....               |
| <b>Disorderly House, keeping</b>                 | Misdemeanor ....          | C. L.; 3 G. 4, c. 114    |
| <b>Dissenters.</b>                               |                           |                          |
| Disturbing their congregations                   | Misdemeanor ....          | 52 G. 3, c. 155, s. 12   |



| Penal Servitude.                          | Imprisonment, &c.                                                        | Where to be tried. | Costs.                                         |
|-------------------------------------------|--------------------------------------------------------------------------|--------------------|------------------------------------------------|
| .....                                     | Imp. h. l. for not more than 2 years                                     | Sessions           |                                                |
| For life, or not less than 3 years        | Or imp. h. l. for not more than 4 years                                  | Assizes            | Costs.                                         |
| .....                                     | Imp. h. l. for not more than 3 years                                     | Sessions           |                                                |
| For life, or not less than 3 years        | Or imp. h. l. for not more than 4 years                                  | Assizes            | Costs.                                         |
| For not more than 7 nor less than 3 years | Or imp. h. l. for not more than 2 years                                  | Sessions           | Costs.                                         |
| .....                                     | Imp. h. l. for not more than 1 year                                      | Sessions           |                                                |
| For life, or not less than 3 years        | Or imp. h. l. for not more than 4 years                                  | Assizes            | Costs.                                         |
| Same .....                                | Same .....                                                               | Assizes            | Costs.                                         |
| .....                                     | Fine or imp. or both                                                     | Sessions           |                                                |
| .....                                     | Same .....                                                               | Sessions           |                                                |
| For life, or not less than 3 years        | Or imp. h. l. for not more than 4 years                                  | Assizes            | Costs.                                         |
| .....                                     | Imp. h. l. for not more than 2 years                                     | Assizes            | Costs.                                         |
| .....                                     | Fine or imp. (h. l. in some cases, 14 & 15 Vict. c. 100, s. 29), or both | Sessions           | Costs in some cases, 14 & 15 Vict. c. 55, s. 2 |
| .....                                     | Imp. h. l. for not more than 3 years                                     | Sessions           |                                                |
| .....                                     | Fine or imp. or both                                                     | Sessions           |                                                |
| .....                                     | Fine or imp. (h. l.), or both                                            | Sessions           | Costs paid by overseers                        |
| .....                                     | Fine £40.....                                                            | Sessions           |                                                |



| OFFENCE.                                 | Felony<br>or Misdemeanor.                            | Statute.                       |
|------------------------------------------|------------------------------------------------------|--------------------------------|
| <b>Dog Stealing, Second Offence</b>      | Misdemeanor ....                                     | 8 & 9 Vict. c. 47, s. 2        |
| Receiving money to restore stolen dogs   | Misdemeanor ....                                     | Id. s. 6.....                  |
| <b>Embezzlement.</b>                     |                                                      |                                |
| By clerks or servants.....               | Felony.....                                          | 7 & 8 G. 4, c. 29, s. 47       |
| By officers in Her Majesty's service     | Felony.....                                          | 2 W. 4, c. 4, s. 1....         |
| <b>Embracery</b> .....                   | Misdemeanor ....                                     | C. L.; 6 G. 4, c. 50, s. 61    |
| <b>Escape.</b>                           |                                                      |                                |
| 1. Party escaping .....                  | Misdemeanor ....                                     | C. L. ....                     |
| 2. Aiding prisoner to escape ..          | Misdemeanor ....                                     | C. L. ....                     |
|                                          | Or felony, if party in custody for treason or felony | 16 G. 2, c. 31, s. 3..         |
| 3. Officers allowing escape:             |                                                      |                                |
| — negligent .....                        | Misdemeanor ....                                     | C. L. ....                     |
| — voluntary .....                        | Misdemeanor ....                                     | C. L. ....                     |
| 4. Aiding the escape of prisoners of war | Felony .....                                         | 52 G. 3, c. 156, s. 1          |
| <b>Extortion</b> .....                   | Misdemeanor ....                                     | C. L. ....                     |
| <b>False Imprisonment</b> ....           | Misdemeanor ....                                     | C. L. ....                     |
| <b>False Pretences</b> .....             | Misdemeanor ....                                     | 7 & 8 G. 4, c. 29, s. 53       |
| <b>Forcible Entry and Detainer</b>       | Misdemeanor ....                                     | 5 Ric. 2, c. 7; 21 J. 1, c. 15 |
| <b>Foreign Service.</b>                  |                                                      |                                |
| 1. Engaging in it without licence        | Misdemeanor ....                                     | 59 G. 3, c. 69, s. 2..         |
| 2. The like in the naval service         | Misdemeanor ....                                     | Id. ....                       |



| Penal Servitude.                            | Imprisonment, &c.                         | Where to be tried. | Costs. |
|---------------------------------------------|-------------------------------------------|--------------------|--------|
| .....                                       | Fine, or imp. h. l., or both              | Sessions           |        |
| .....                                       | Fine or imp. or both                      | Sessions           |        |
| For not more than 14 years, nor less than 3 | Or imp. h. l. for not more than 3 years   | Sessions           | Costs. |
| Same .....                                  | Same .....                                | Sessions           | Costs. |
| .....                                       | Fine or imp. or both                      | Sessions           |        |
| .....                                       | Same .....                                | Sessions           |        |
| .....                                       | Same .....                                | Sessions           |        |
| For 7 or not less than 3 years              | .....                                     | Sessions           | Costs. |
| .....                                       | Same .....                                | Sessions           |        |
| .....                                       | Same .....                                | Sessions           |        |
| For life, or not less than 3 years          | (How, if party be re-taken and convicted) | Assizes            | Costs. |
| .....                                       | Fine or imp. or both                      | Sessions           |        |
| .....                                       | Same .....                                | Sessions           |        |
| For 7, or not less than 3 years             | Or same .....                             | Sessions           | Costs. |
| .....                                       | Same .....                                | Sessions           |        |
| .....                                       | Same .....                                | Sessions           |        |
| .....                                       | Same .....                                | Sessions           |        |
| .....                                       | Same .....                                | Sessions           |        |



| OFFENCE.                                                                | Felony<br>or Misdemeanor. | Statute.                                        |
|-------------------------------------------------------------------------|---------------------------|-------------------------------------------------|
| <b>Foreign Service</b> — <i>continued.</i>                              |                           |                                                 |
| 3. Going abroad for the purpose of enlisting                            | Misdemeanor . . . .       | 59 G. 3, c. 69, s. 2 ..                         |
| 4. Engaging, &c., others in such service                                | Misdemeanor . . . .       | Id. . . . .                                     |
| 5. Fitting out vessels of war for foreign states                        | Misdemeanor . . . .       | Id. ss. 7, 8 . . . . .                          |
| <b>Forgery.</b>                                                         |                           |                                                 |
| 1. Seals or sign manual . . . . .                                       | Treason . . . . .         | 1 W. 4, c. 66, s. 2;<br>1 Vict. c. 84, s. 1     |
| 2. Bills, cheques, bank notes, wills, exchequer bills, East India bonds | Felony . . . . .          | 1 W. 4, c. 66, s. 3;<br>1 Vict. c. 84, ss. 1, 2 |
| 3. Paper for forged exchequer bills, making or having                   | Felony . . . . .          | 5 & 6 Vict. c. 66, s. 9                         |
| 4. Deeds, bonds, receipts, orders for goods, &c.                        | Felony . . . . .          | 1 W. 4, c. 66, s. 10..                          |
| 5. Foreign instruments . . . . .                                        | Felony . . . . .          | Id. s. 30 . . . . .                             |
| 6. Forging bank notes . . . . .                                         | Felony . . . . .          | 1 W. 4, c. 66, s. 3;<br>1 Vict. c. 84, ss. 1, 2 |
| 7. Buying or having forged bank notes                                   | Felony . . . . .          | 1 W. 4, c. 66, s. 12..                          |
| 8. Making paper for forged blank notes, or moulds                       | Felony . . . . .          | Id. s. 13 . . . . .                             |
| 9. Making, having, or using plates for bank notes, or the blank notes   | Felony . . . . .          | Id. ss. 15, 16 . . . . .                        |
| 10. Making other bankers' paper or moulds                               | Felony . . . . .          | Id. s. 17 . . . . .                             |
| 11. Making, using, &c., plates for other bankers' notes                 | Felony . . . . .          | Id. s. 18 . . . . .                             |
| 12. Making, using, &c., plates for notes of foreign banks, &c.          | Felony . . . . .          | Id. s. 19 . . . . .                             |
| 13. Forging transfers of stock, or powers of attorney, &c.              | Felony . . . . .          | 1 W. 4, c. 66, s. 6;<br>1 Vict. c. 84, s. 1     |



| Penal Servitude.                            | Imprisonment, &c.                                        | Where to be tried. | Costs. |
|---------------------------------------------|----------------------------------------------------------|--------------------|--------|
| .....                                       | Fine or imp. or both                                     | Sessions           |        |
| .....                                       | Same .....                                               | Sessions           |        |
| .....                                       | Same .....                                               | Sessions           |        |
| For life, or not less than 3 years          | Or imp. h. l. for not more than 4 years, nor less than 2 | Assizes            | Costs. |
| Same .....                                  | Same .....                                               | Assizes            | Costs. |
| Same .....                                  | Same .....                                               | Assizes            | Costs. |
| Same as if the instrument were English      | .....                                                    | Assizes            | Costs. |
| For life, or not less than 3 years          | Same .....                                               | Assizes            | Costs. |
| For 14 years .....                          | .....                                                    | Assizes            | Costs. |
| Same .....                                  | .....                                                    | Assizes            | Costs. |
| Same .....                                  | .....                                                    | Assizes            | Costs. |
| For not more than 14 years, nor less than 3 | Or imp. h. l. for not more than 3 years, nor less than 1 | Assizes            | Costs. |
| Same .....                                  | Same .....                                               | Assizes            | Costs. |
| Same .....                                  | Same .....                                               | Assizes            | Costs. |
| For life, or not less than 3 years          | Or imp. h. l. for not more than 4 years, nor less than 2 | Assizes            | Costs. |



| OFFENCE.                                                     | Felony<br>or Misdemeanor. | Statute.                                           |
|--------------------------------------------------------------|---------------------------|----------------------------------------------------|
| <b>Forgery—continued.</b>                                    |                           |                                                    |
| 14. Forging the attestation of such power of attorney        | Felony.....               | 1 W. 4, c. 66, s. 8 ..                             |
| 15. Personating the owner of stock                           | Felony.....               | 1 W. 4, c. 66, s. 6;<br>1 Vict. c. 84, s. 1        |
| 16. Making false entries in the books as to the public funds | Felony.....               | 1 W. 4, c. 66, s. 5;<br>1 Vict. c. 84, s. 1        |
| 17. Acknowledging recognizances, &c., in another's name      | Felony.....               | 1 W. 4, c. 66, s. 11..                             |
| 18. False entries in registers of baptism, &c.               | Felony.....               | Id. s. 20 .....                                    |
| 19. Destroying or injuring such register                     | Felony.....               | 6 & 7 W. 4, c. 86,<br>s. 43                        |
| 20. Making false entries in copies sent to registrar         | Felony.....               | 1 W. 4, c. 66, s. 22..                             |
| <b>Game.</b>                                                 |                           |                                                    |
| 1. Killing hares or conies in warrens, &c. in the night      | Misdemeanor ....          | 7 & 8 G. 4, c. 29,<br>s. 30                        |
| 2. Taking, &c. game in the night, third offence              | Misdemeanor ....          | 9 G. 4, c. 69, s. 1;<br>7 & 8 Vict. c. 29,<br>s. 2 |
| 3. Three or more, armed, taking game in the night            | Misdemeanor ....          | 9 G. 4, c. 69, s. 9 ..                             |
| 4. Offenders using violence to those who apprehend them      | Misdemeanor ....          | Id. s. 2 .....                                     |
| <b>Gaming.</b>                                               |                           |                                                    |
| Cheating at cards, dice, &c. ..                              | Misdemeanor ....          | 8 & 9 Vict. c. 109,<br>s. 17                       |
| <b>Gaming-house, keeping ..</b>                              | Misdemeanor ....          | C.L. ....                                          |
| <b>Homicide.</b>                                             |                           |                                                    |
| Murder .....                                                 | Felony .....              | 9 G. 4, c. 31, s. 3 ..                             |



| Penal Servitude.                           | Imprisonment, &c.                                        | Where to be tried. | Costs. |
|--------------------------------------------|----------------------------------------------------------|--------------------|--------|
| For 7, or not less than 3 years            | Or imp. h. l. for not more than 2 years, nor less than 1 | Assizes            | Costs. |
| For life, or not less than 3 years         | Or imp. h. l. for not more than 4 years, nor less than 2 | Assizes            | Costs. |
| Same .....                                 | Same .....                                               | Assizes            | Costs. |
| Same .....                                 | Same .....                                               | Assizes            | Costs. |
| Same .....                                 | Same .....                                               | Assizes            | Costs. |
| For 7, or not less than 3 years            | Or imp. h. l. for not more than 2 years                  | Sessions           | Costs. |
| For 7, or not less than 3 years            | Or imp. h. l. for not more than 2 years, nor less than 1 | Assizes            | Costs. |
| .....                                      | Fine or imprisonment or both                             | Sessions           |        |
| For 7, or not less than 3 years            | Or imp. h. l. for not more than 2 years                  | Sessions           |        |
| For not more than 14 nor less than 3 years | Or imp. h. l. for not more than 3 years                  | Assizes            |        |
| For 7, or not less than 3 years            | Or imp. h. l. for not more than 2 years                  | Sessions           |        |
| Same .....                                 | Or fine, or imp. or both                                 | Sessions           |        |
| .....                                      | Fine, or imp. h. l., or both                             | Sessions           |        |
| Death .....                                | .....                                                    | Assizes            | Costs. |



| OFFENCE.                                                 | Felony<br>or Misdemeanor. | Statute.                                                |
|----------------------------------------------------------|---------------------------|---------------------------------------------------------|
| <b>Homicide—continued.</b>                               |                           |                                                         |
| Manslaughter .....                                       | Felony .....              | 9 G. 4, c. 31, s. 9 ..                                  |
| <b>Horse Slaughtering.</b>                               |                           |                                                         |
| Putting the hide into lime .....                         | Misdemeanor .....         | 26 G. 3, c. 71, s. 9..                                  |
| <b>Indecency.</b>                                        |                           |                                                         |
| Public indecency .....                                   | Misdemeanor .....         | C. L. ....                                              |
| Printing or publishing indecent<br>books, prints, &c.    | Misdemeanor .....         | C. L. ....                                              |
| <b>Justice's Order, Disobey-<br/>ing</b>                 | Misdemeanor .....         | C. L. ....                                              |
| <b>Larceny.</b>                                          |                           |                                                         |
| <b>1. Larceny of Goods and<br/>Chattels</b>              | Felony .....              | 7 & 8 G. 4, c. 29,<br>s. 4; 12 Vict. c. 11,<br>s. 1     |
| <b>2. Of Valuable Securities</b>                         | Felony .....              | 7 & 8 G. 4, c. 29, s. 5                                 |
| Deeds, &c., relating to real pro-<br>perty               | Misdemeanor .....         | Id. s. 23 .....                                         |
| Wills or codicils .....                                  | Misdemeanor .....         | Id. s. 22 .....                                         |
| Records and other documents                              | Misdemeanor .....         | Id. s. 21 .....                                         |
| <b>3. Larceny of Animals.</b>                            |                           |                                                         |
| Horses, cows, sheep, &c. ....                            | Felony .....              | 7 & 8 G. 4, c. 29, s. 25;<br>1 Vict. c. 90, ss.<br>1, 3 |
| Killing with intent to steal them                        | Felony .....              | Same .....                                              |
| Hunting, killing or wounding<br>deer in inclosed grounds | Felony .....              | 7 & 8 G. 4, c. 29, s. 26                                |
| The like in uninclosed grounds,<br>2nd offence           | Felony .....              | Id. ....                                                |
| Beating or wounding deer<br>keepers                      | Felony .....              | Id. s. 29 .....                                         |



| Penal Servitude.                           | Imprisonment, &c.                                | Where to be tried. | Costs. |
|--------------------------------------------|--------------------------------------------------|--------------------|--------|
| For life, or not less than 3 years         | Or imp. h. l. for not more than 4 years, or fine | Assizes            | Costs. |
| .....                                      | Fine and imp. ....                               | Sessions           |        |
| .....                                      | Fine or imp. or both                             | Sessions           |        |
| .....                                      | Same .....                                       | Sessions           |        |
| .....                                      | Same .....                                       | Sessions           |        |
| .....                                      | Imp. h. l. for not more than 2 years             | Sessions           | Costs. |
| For 7, or not less than 3 years            | Same .....                                       | Sessions           | Costs. |
| For 7 or not less than 3 years             | Or fine or imp. or both                          | Assizes            |        |
| Same .....                                 | Same .....                                       | Same               |        |
| Same .....                                 | Same .....                                       | Same               |        |
| For not more than 15 or less than 10 years | Or imp. h. l. for not more than 3 years          | Sessions           | Costs. |
| Same .....                                 | Same .....                                       | Same               | Costs. |
| For 7, or not less than 3 years            | Or imp. h. l. for not more than 2 years          | Same               | Costs. |
| Same .....                                 | Same .....                                       | Same               | Costs. |
| Same .....                                 | Same .....                                       | Same               | Costs. |



| OFFENCE.                                                              | Felony<br>or Misdemeanor. | Statute.                    |
|-----------------------------------------------------------------------|---------------------------|-----------------------------|
| <b>3. Larceny of Animals—continued.</b>                               |                           |                             |
| Taking or killing hares or conies<br>in the night                     | Misdemeanor ....          | 7 & 8 G. 4, c. 29, s. 30    |
| Pigeons .....                                                         | Felony .....              | C. L. ....                  |
| Fish, in water adjoining a dwell-<br>ing-house                        | Misdemeanor ....          | 7 & 8 G. 4, c. 29,<br>s. 34 |
| Oysters, stealing or dredging for                                     | Misdemeanor ....          | Id. s. 36 .....             |
| <b>4. Larceny of Things Grow-<br/>ing on or attached to<br/>Land.</b> |                           |                             |
| Trees, &c. in pleasure grounds                                        | Felony .....              | Id. s. 38 .....             |
| Trees, &c. elsewhere, of value of<br>£5                               | Felony .....              | Id. s. 38 .....             |
| Trees, &c. of value of 1s., third<br>offence                          | Felony .....              | Id. s. 39 .....             |
| Plants, fruits, &c., in gardens,<br>second offence                    | Felony .....              | Id. s. 42 .....             |
| Metal, glass, wood, &c., fixed to<br>houses or land                   | Felony .....              | Id. s. 44 .....             |
| <b>5. Larceny from Mines.</b>                                         | Felony .....              | Id. s. 37 .....             |
| <b>6. Larceny from the Person.</b>                                    |                           |                             |
| Robbery .....                                                         | Felony .....              | 1 Vict. c. 87, s. 5....     |
| Robbery by two or more .....                                          | Felony .....              | Id. s. 3.....               |
| Robbery by person armed .....                                         | Felony .....              | Id. s. 3.....               |
| Robbery and beating, &c. ....                                         | Felony .....              | Id. s. 3.....               |
| Robbery and wounding .....                                            | Felony .....              | Id. s. 2.....               |
| Assault with intent to rob .....                                      | Felony .....              | Id. s. 6.....               |
| The like by person armed, or by<br>two or more                        | Felony .....              | Id. s. 3.....               |
| Stealing from the person                                              | Felony .....              | Id. s. 5.....               |



| Penal Servitude.                             | Imprisonment, &c.                       | Where to be tried. | Costs. |
|----------------------------------------------|-----------------------------------------|--------------------|--------|
| .....                                        | Fine or imp. or both                    | Sessions           |        |
| For 7, or not less than 3 years              | Or imp. h. l. for not more than 2 years | Same               | Costs. |
| .....                                        | Fine or imp. or both                    | Same               |        |
| .....                                        | Same .....                              | Same               |        |
| For 7, or not less than 3 years              | Or imp. h. l. for not more than 2 years | Same               | Costs. |
| Same .....                                   | Same .....                              | Same               | Costs. |
| Same .....                                   | Same .....                              | Same               | Costs. |
| Same .....                                   | Same .....                              | Same               | Costs. |
| Same .....                                   | Same .....                              | Same               | Costs. |
| For not more than 15 years                   | Or imp. h. l. for not more than 3 years | Same               | Costs. |
| For life, or not less than 15 years          | Same .....                              | Assizes            | Costs. |
| Same .....                                   | Same .....                              | Same               | Costs. |
| Same .....                                   | Same .....                              | Same               | Costs. |
| Death .....                                  | .....                                   | Same               | Costs. |
| .....                                        | Imp. h. l. for not more than 3 years    | Sessions           | Costs. |
| For life, or not less than 15 years          | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| For not more than 15 years, nor less than 10 | Or same .....                           | Sessions           | Costs. |



| OFFENCE.                                                         | Felony<br>or Misdemeanor. | Statute.                                                |
|------------------------------------------------------------------|---------------------------|---------------------------------------------------------|
| <b>6. Larceny from the Person</b><br>—continued.                 |                           |                                                         |
| Demanding money with menaces                                     | Felony.....               | 1 Vict. c. 87, s. 7....                                 |
| Using chloroform, for the purpose of committing a felony         | Felony.....               | 14 & 15 Vict. c. 19,<br>s. 3                            |
| <b>7. Larceny from the House.</b>                                |                           |                                                         |
| Stealing in a dwelling-house to the value of £5                  | Felony.....               | 7 & 8 G. 4, c. 29, s. 12;<br>1 Vict. c. 90, ss.<br>1, 3 |
| Stealing in a dwelling-house, a person therein being put in fear | Felony.....               | 7 & 8 G. 4, c. 29, s. 13;<br>1 Vict. c. 90, s. 5        |
| <b>8. Larceny from Manufactories.</b>                            |                           |                                                         |
| Stealing goods in process of manufacture                         | Felony .....              | 7 & 8 G. 4, c. 29,<br>s. 16                             |
| <b>9. Larceny from Ships, Wharfs, &amp;c.</b>                    |                           |                                                         |
| From ships, docks, wharfs, &c.                                   | Felony .....              | 7 & 8 G. 4, c. 29, s. 17;<br>1 Vict. c. 90, ss. 2, 3    |
| From a ship in distress or wrecked                               | Felony .....              | 7 & 8 G. 4, c. 29,<br>s. 18                             |
| <b>10. Larceny by Clerks or Tenants.</b>                         |                           |                                                         |
| By clerks or servants .....                                      | Felony .....              | Id. ss. 46, 4 .....                                     |
| By tenants or lodgers.....                                       | Felony .....              | Id. s. 45 .....                                         |
| <b>Letter, Threatening.</b>                                      |                           |                                                         |
| Letter threatening to murder, or to burn or destroy property     | Felony .....              | 10 & 11 Vict. c. 66,<br>s. 1                            |



| Penal Servitude.                                   | Imprisonment, &c.                           | Where<br>to be tried. | Costs. |
|----------------------------------------------------|---------------------------------------------|-----------------------|--------|
| .....                                              | Imp. h. l. for not<br>more than 3 years     | Sessions              | Costs. |
| For life, or not less<br>than 3 years              | Or same .....                               | Assizes               | Costs. |
| For not more than 15<br>years, nor less than<br>10 | Or same .....                               | Sessions              | Costs. |
| Same .....                                         | Same .....                                  | Sessions              | Costs. |
| Same .....                                         | Same .....                                  | Same                  | Costs. |
| Same .....                                         | Same .....                                  | Same                  | Costs. |
| Death .....                                        | .....                                       | Assizes               | Costs. |
| For not more than<br>14, or less than 3<br>years   | Or same .....                               | Sessions              | Costs. |
| For 7, or not less than<br>3 years                 | Or imp. h. l. for not<br>more than 2 years  | Sessions              | Costs. |
| For life, or not less<br>than 3 years              | Or. imp. h. l. for not<br>more than 4 years | Assizes               | Costs. |



| OFFENCE.                                                   | Felony<br>or Misdemeanor. | Statute.                                             |
|------------------------------------------------------------|---------------------------|------------------------------------------------------|
| <b>Letter, Threatening</b> — <i>continued.</i>             |                           |                                                      |
| Letter threatening to accuse of crime                      | Felony .....              | 10 & 11 Vict. c. 66, s. 1                            |
| Letter demanding money, with menaces, &c.                  | Felony .....              | 7 & 8 G. 4, c. 29, s. 8                              |
| <b>Libel.</b>                                              |                           |                                                      |
| Seditious libel.....                                       | Misdemeanor ....          | C. L.....                                            |
| Blasphemous libel .....                                    | Misdemeanor ....          | C. L.....                                            |
| Libel reflecting on the public administration of justice   | Misdemeanor ....          | C. L.....                                            |
| Defamatory libel.....                                      | Misdemeanor ....          | C. L.; 6 & 7 Vict. c. 96                             |
| <b>Lunatic.</b>                                            |                           |                                                      |
| Medical man signing false certificate of lunacy            | Misdemeanor ....          | 16 & 17 Vict. c. 97, s. 122                          |
| Officers in public asylums ill-treating lunatics           | Misdemeanor ....          | Id. s. 123.....                                      |
| The like, in private asylums....                           | Misdemeanor ....          | 8 & 9 Vict. c. 100, s. 56; 16 & 17 Vict. c. 96, s. 9 |
| <b>Maintenance</b> .....                                   | Misdemeanor ....          | C. L.....                                            |
| <b>Malicious Injuries.</b>                                 |                           |                                                      |
| <b>1. Malicious Injuries to Houses, &amp;c.</b>            |                           |                                                      |
| Setting fire to a church or chapel                         | Felony .....              | 1 Vict. c. 89, s. 3 ..                               |
| Setting fire to a dwelling-house, any person being therein | Felony .....              | Id. s. 2.....                                        |
| Setting fire to a house, outhouse, manufactory, &c.        | Felony .....              | Id. s. 3.....                                        |
| Setting fire to a hovel, shed, fold, &c.                   | Felony .....              | 7 & 8 Vict. c. 62, s. 1                              |
| Setting fire to hay, straw, &c., in a farm building        | Felony .....              | Id. s. 2.....                                        |
| Attempting to set fire to buildings, &c.                   | Felony .....              | 9 & 10 Vict. c. 25, s. 7                             |



| Penal Servitude.                    | Imprisonment, &c.                       | Where to be tried. | Costs. |
|-------------------------------------|-----------------------------------------|--------------------|--------|
| For life, or not less than 3 years  | Or imp. h. l. for not more than 4 years | Assizes            | Costs. |
| Same .....                          | Same .....                              | Same               | Costs. |
| .....                               | Fine or imp. or both                    | Assizes            |        |
| .....                               | Same .....                              | Same               |        |
| .....                               | Same .....                              | Same               |        |
| .....                               | Same .....                              | Same               |        |
| .....                               | Same .....                              | Sessions           |        |
| .....                               | Same .....                              | Same               |        |
| .....                               | Same .....                              | Same               |        |
| .....                               | Same .....                              | Same               |        |
| For life, or not less than 15 years | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| Death .....                         | .....                                   | Same               | Costs. |
| For life, or not less than 15 years | Same .....                              | Same               | Costs. |
| Same .....                          | Same .....                              | Same               | Costs. |
| Same .....                          | Same .....                              | Same               | Costs. |
| For not more than 15 years          | Or imp. h. l. for not more than 2 years | Sessions           | Costs. |



| OFFENCE.                                                                                  | Felony<br>or Misdemeanor. | Statute.                                      |
|-------------------------------------------------------------------------------------------|---------------------------|-----------------------------------------------|
| <b>1. Malicious Injuries to Houses, &amp;c.—continued.</b>                                |                           |                                               |
| Riotously demolishing a church, house, &c.                                                | Felony .....              | 7 & 8 G. 4, c. 30, s. 8;<br>6 & 7 Vict. c. 10 |
| Destroying or damaging a house with gunpowder, any person being therein                   | Felony .....              | 9 & 10 Vict. c. 25,<br>ss. 1, 5               |
| Destroying or damaging any building with gunpowder, with intent to murder                 | Felony .....              | Id. ss. 2, 5 .....                            |
| Attempting to destroy buildings, &c., with gunpowder                                      | Felony .....              | Id. s. 6 .....                                |
| Making or having gunpowder, with intent to commit any of the said offences                | Misdemeanor ....          | Id. s. 8 .....                                |
| <b>2. Malicious Injuries to Manufactures, Machinery, &amp;c.</b>                          |                           |                                               |
| Destroying goods in process of manufacture, machinery, &c.                                | Felony .....              | 7 & 8 G. 4, c. 30,<br>s. 3                    |
| Destroying machines in other manufactures, thrashing machines, &c.                        | Felony .....              | Id. s. 4 .....                                |
| <b>3. Malicious Injuries to Individuals.</b>                                              |                           |                                               |
| Burning, disfiguring or disabling a person with gunpowder, &c.                            | Felony .....              | 9 & 10 Vict. c. 25,<br>s. 1                   |
| Exploding or sending explosive substances, or throwing corrosive fluids, with intent, &c. | Felony .....              | Id. ss. 4, 5 .....                            |
| <b>4. Malicious Injuries to Corn, Trees, Fences, &amp;c.</b>                              |                           |                                               |
| Setting fire to crops of corn, &c.                                                        | Felony .....              | 7 & 8 G. 4, c. 30, s. 17                      |
| Setting fire to stacks of corn, &c.                                                       | Felony .....              | 1 Vict. c. 89, s. 10..                        |



| Penal Servitude.                    | Imprisonment, &c.                       | Where to be tried. | Costs. |
|-------------------------------------|-----------------------------------------|--------------------|--------|
| For life, or not less than 3 years  | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| For life, or not less than 15 years | Same .....                              | Same               | Costs. |
| Same .....                          | Same .....                              | Same               | Costs. |
| For not more than 15 years          | Or imp. h. l. for not more than 2 years | Sessions           | Costs. |
| .....                               | Imp. h. l. for not more than 2 years    | Sessions           |        |
| For life, or not less than 3 years  | Or imp. h. l. for not more than 4 years | Assizes            | Costs. |
| For 7, or not less than 3 years     | Or imp. h. l. for not more than 2 years | Sessions           | Costs. |
| For life, or not less than 15 years | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| Same .....                          | Same .....                              | Same..             | Costs. |
| For 7, or not less than 3 years     | Or imp. h. l. for not more than 2 years | Same               | Costs. |
| For life, or not less than 15 years | Or imp. h. l. for not more than 3 years | Same               | Costs. |



| OFFENCE.                                                                                         | Felony<br>or Misdemeanor. | Statute.                                          |
|--------------------------------------------------------------------------------------------------|---------------------------|---------------------------------------------------|
| <b>4. Malicious Injuries to Corn, Trees, Fences, &amp;c.</b><br>—continued.                      |                           |                                                   |
| Destroying hop-binds .....                                                                       | Felony .....              | 7 & 8 G. 4, c. 30, s. 18; 1 Vict. c. 90, ss. 2, 3 |
| Destroying or damaging trees, shrubs, &c., in a pleasure ground,—or elsewhere to the value of £5 | Felony .....              | 7 & 8 G. 4, c. 30, s. 19                          |
| Damaging trees, &c., to amount of 1s., third offence                                             | Felony .....              | Id. ss. 20, 19 .....                              |
| Damaging plants, fruits, &c., in gardens, second offence                                         | Felony .....              | Id. ss. 21, 19 .....                              |
| <b>5. Malicious Injuries to Mines</b>                                                            |                           |                                                   |
| Setting fire to a coal mine.....                                                                 | Felony .....              | 1 Vict. c. 89, s. 9..                             |
| Conveying water into a mine, obstructing the shaft, &c.                                          | Felony .....              | 7 & 8 G. 4, c. 30, s. 6                           |
| Damaging the steam engines, staiths, waggonways, &c.                                             | Felony .....              | Id. s. 7 .....                                    |
| <b>6. Malicious Injuries to Rivers, Canals, Ponds, Bridges, Turnpike Gates, &amp;c.</b>          |                           |                                                   |
| Injuries to rivers, canals, &c. ..                                                               | Felony .....              | 7 & 8 G. 4, c. 30, s. 12                          |
| Breaking down the dam of a fish pond or mill pond, or putting in lime                            | Misdemeanor ....          | Id. s. 15 .....                                   |
| Destroying or damaging bridges                                                                   | Felony .....              | Id. s. 13 .....                                   |
| Destroying turnpike gates, weighing machines, &c.                                                | Misdemeanor ....          | Id. s. 14 .....                                   |
| <b>7. Malicious Injuries to Railways.</b>                                                        |                           |                                                   |
| Placing wood, &c. on rails, with intent, &c.                                                     | Felony .....              | 14 & 15 Vict. c. 19, s. 6                         |



| Penal Servitude.                                 | Imprisonment, &c.                                                  | Where<br>to be tried. | Costs. |
|--------------------------------------------------|--------------------------------------------------------------------|-----------------------|--------|
| For not more than<br>15 or less than 10<br>years | Same .....                                                         | Sessions              | Costs. |
| For 7, or not less than<br>3 years               | Or imp. h. l. for not<br>more than 2 years                         | Same                  | Costs. |
| Same .....                                       | Same .....                                                         | Same                  | Costs. |
| Same .....                                       | Same .....                                                         | Same                  | Costs. |
| For life, or not less<br>than 15 years           | Or imp. h. l. for not<br>more than 3 years                         | Assizes               | Costs. |
| For 7, or not less than<br>3 years               | Or imp. h. l. for not<br>more than 2 years                         | Sessions              | Costs. |
| Same .....                                       | Same .....                                                         | Sessions              | Costs. |
| For life, or not less<br>than 3 years            | Or imp. h. l. for not<br>more than 4 years                         | Assizes               | Costs. |
| For 7, or not less than<br>3 years               | Or imp. h. l. for not<br>more than 2 years                         | Sessions              | Costs. |
| For life, or not less<br>than 3 years<br>.....   | Or imp. h. l. for not<br>more than 4 years<br>Fine or imp. or both | Assizes<br>Sessions   | Costs. |
| For life, or not less<br>than 3 years            | Or imp. h. l. for not<br>more than 3 years                         | Assizes               | Costs. |



| OFFENCE.                                                                  | Felony<br>or Misdemeanor. | Statute.                                          |
|---------------------------------------------------------------------------|---------------------------|---------------------------------------------------|
| <b>7. Malicious Injuries to Railways—continued.</b>                       |                           |                                                   |
| Throwing a stone upon a railway carriage, with intent, &c.                | Felony .....              | 14 & 15 Vict. c. 19, s. 7                         |
| Setting fire to stations or warehouses                                    | Felony .....              | Id. s. 8.....                                     |
| <b>8. Malicious Injuries to Works of Art.</b>                             | Misdemeanor ....          | 8 & 9 Vict. c. 44, ss. 1, 3                       |
| <b>9. Malicious Injuries to Animals.</b>                                  |                           |                                                   |
| Killing or wounding cattle, sheep, &c.                                    | Felony .....              | 7 & 8 G. 4, c. 30, s. 16; 1 Vict. c. 90, ss. 1, 2 |
| <b>10. Malicious Injuries to Ships.</b>                                   |                           |                                                   |
| Setting fire to ships whereby life endangered, &c.                        | Felony .....              | 1 Vict. c. 89, s. 4 ..                            |
| Setting fire to ships, with intent to prejudice the owner or underwriters | Felony .....              | Id. s. 6.....                                     |
| Damaging a ship otherwise than by fire                                    | Felony .....              | 7 & 8 G. 4, c. 30, s. 10                          |
| Doing any thing to cause shipwreck                                        | Felony .....              | 1 Vict. c. 89, s. 5 ..                            |
| Impeding a man saving himself from wreck                                  | Felony .....              | Id. s. 7.....                                     |
| <b>Mayhem.....</b>                                                        | Misdemeanor ....          | C.L.....                                          |
| <b>Misprision of Treason or Felony.</b>                                   |                           |                                                   |
| Of treason .....                                                          | Misdemeanor ....          | C.L.....                                          |
| Of felony .....                                                           | Misdemeanor ....          | C.L.....                                          |
| Helping to stolen property without trial of offender                      | Felony .....              | 7 & 8 G. 4, c. 29, s. 58                          |
| <b>Mutiny, Inciting to .....</b>                                          | Felony .....              | 37 G. 3, c. 70, s. 1; 1 Vict. c. 91, ss. 1, 2     |



| Penal Servitude.                           | Imprisonment, &c.                       | Where to be tried. | Costs. |
|--------------------------------------------|-----------------------------------------|--------------------|--------|
| For life, or not less than 3 years         | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| For not more than 10 or less than 3 years  | Same .....                              | Sessions           | Costs. |
| .....                                      | Imp. for not more than 6 months         | Same               |        |
| For not more than 15 or less than 10 years | Or imp. h. l. for not more than 3 years | Same               | Costs. |
| Death .....                                | .....                                   | Assizes            | Costs. |
| For life, or not less than 15 years        | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |
| For 7, or not less than 3 years            | Or imp. h. l. for not more than 2 years | Sessions           | Costs. |
| Death .....                                | .....                                   | Assizes            | Costs. |
| For life, or not less than 15 years        | Or imp. h. l. for not more than 3 years | Same               | Costs. |
| .....                                      | Fine or imp. or both                    | Sessions           |        |
| .....                                      | Imp. for life and forfeiture            | Assizes            |        |
| .....                                      | Fine or imp. or both                    | Sessions           |        |
| For life, or not less than 3 years         | Or imp. h. l. for not more than 4 years | Assizes            | Costs. |
| For life, or not less than 15 years        | Or imp. h. l. for not more than 3 years | Assizes            | Costs. |



| OFFENCE.                                                               | Felony<br>or Misdemeanor. | Statute.                                             |
|------------------------------------------------------------------------|---------------------------|------------------------------------------------------|
| <b>Nuisance</b> .....                                                  | Misdemeanor ....          | C.L.....                                             |
| <b>Oaths, unlawful.</b>                                                |                           |                                                      |
| Administering or taking oath to<br>commit treason or capital<br>felony | Felony .....              | 53 G. 3, c. 104, s. 1;<br>1 Vict. c. 91, ss. 1,<br>2 |
| Oath to engage in any mutinous<br>or seditious purpose                 | Felony .....              | 37 G. 3, c. 123, s. 1                                |
| <b>Office, buying or selling</b>                                       | Misdemeanor ....          | 49 G. 3, c. 126, s. 3;<br>5 & 6 Ed. 6, c. 16         |
| Selling office for money.....                                          | Misdemeanor ....          | 49 G. 3, c. 126, s. 4                                |
| <b>Office, refusing to execute</b>                                     | Misdemeanor ....          | C.L. ....                                            |
| <b>Order of Justices, disobey-<br/>ing</b>                             | Misdemeanor ....          | C.L. ....                                            |
| <b>Parliament.</b>                                                     |                           |                                                      |
| Giving false answers to questions<br>at elections                      | Misdemeanor ....          | 6 & 7 Vict. c. 18, s. 81                             |
| Personating voters.....                                                | Misdemeanor ....          | Id. s. 83 .....                                      |
| <b>Perjury and Subornation.</b>                                        |                           |                                                      |
| Perjury at C.L. ....                                                   | Misdemeanor ....          | 2 G. 2, c. 25, s. 2....                              |
| Perjury under stat. Eliz. ....                                         | Misdemeanor ....          | 5 El. c. 9, ss. 3, 5;<br>2 G. 2, c. 25, s. 2         |
| Subornation .....                                                      | Misdemeanor ....          | 2 G. 2, c. 25, s. 2 ..                               |
| <b>Personating.</b>                                                    |                           |                                                      |
| Personating soldiers or seamen..                                       | Felony .....              | 5 G. 4, c. 107, s. 5..                               |
| Personating, or forging the names<br>of, officers, &c., in the army    | Felony .....              | 7 G. 4, c. 16, s. 38..                               |
| <b>Piracy.</b>                                                         |                           |                                                      |
| At common law .....                                                    | .....                     | 7 & 8 G. 4, c. 28....                                |



| Penal Servitude.                                  | Imprisonment, &c.                       | Where to be tried.       | Costs. |
|---------------------------------------------------|-----------------------------------------|--------------------------|--------|
| .....                                             | Fine or imp. or both                    | Sessions                 |        |
| For life, or not less than 15 years               | Or imp. h. l. for not more than 3 years | Assizes                  | Costs. |
| For 7, or not less than 3 years                   | .....                                   | Assizes                  | Costs. |
| .....                                             | Fine, or imp. or both                   | Sessions                 |        |
| .....                                             | Fine, or imp. or both                   | Sessions                 |        |
| .....                                             | Same .....                              | Sessions                 |        |
| .....                                             | Same .....                              | Sessions                 |        |
| .....                                             | Same .....                              | Sessions                 |        |
| .....                                             | Imp. h. l. for not more than 2 years    | Sessions                 |        |
| For 7, or not less than 3 years                   | Or imp. h. l. for not more than 7 years | Assizes                  | Costs. |
| Same .....                                        | Same .....                              | Assizes                  | Costs. |
| Same .....                                        | Same .....                              | Assizes                  | Costs. |
| For life, or not less than 3 years                | Same .....                              | Assizes                  | Costs. |
| For life, or such term as the court shall adjudge | .....                                   | Assizes                  | Costs. |
| Same as robbery ..                                | .....                                   | Assizes, or Cen. Cr. Ct. | Costs. |



| OFFENCE.                                                          | Felony<br>or Misdemeanor.                                                                    | Statute.                                                                                           |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <b>Piracy.—continued.</b>                                         |                                                                                              |                                                                                                    |
| And cutting or wounding .....                                     | .....                                                                                        | 1 Vict. c. 88, s. 2 .....                                                                          |
| Piracy by statute .....                                           | .....                                                                                        | 1 Vict. c. 88, s. 5;<br>11 & 12 W. 3, c. 7,<br>ss. 8, 9; 8 G. 1, c.<br>24, s. 1; 18 G. 2,<br>c. 30 |
| <b>Post Office.</b>                                               |                                                                                              |                                                                                                    |
| Stealing or embezzling letters ..                                 | Felony .....                                                                                 | 1 Vict. c. 36, s. 26..                                                                             |
| Stealing a letter bag, or a letter<br>from it, or stopping a mail | Felony .....                                                                                 | Id. s. 28 .....                                                                                    |
| Stealing from a letter bag in a<br>post-office packet             | Felony .....                                                                                 | Id. s. 29 .....                                                                                    |
| Stealing from a letter .....                                      | Felony .....                                                                                 | Id. s. 27 .....                                                                                    |
| Receiving letter so stolen .....                                  | Felony .....                                                                                 | Id. s. 30 .....                                                                                    |
| Opening or delaying letters ....                                  | Misdemeanor ....                                                                             | Id. s. 25 .....                                                                                    |
| Retaining letters lost or misde-<br>livered                       | Misdemeanor ....                                                                             | Id. s. 31 .....                                                                                    |
| Stealing or detaining votes or<br>newspapers                      | Misdemeanor ....                                                                             | Id. s. 32 .....                                                                                    |
| Forging the hand of the receiver-<br>general                      | Felony .....                                                                                 | Id. s. 33 .....                                                                                    |
| <b>Prison Breaking.</b>                                           |                                                                                              |                                                                                                    |
| Breach of prison .....                                            | Felony, if the party<br>be in custody for<br>felony; misde-<br>meanor, if for<br>misdemeanor | 1 Ed. 2, st. 2 .....                                                                               |
| By convicts in Penitentiary ....                                  | Felony .....                                                                                 | 1 Vict. c. 91, s. 1 ..                                                                             |
| Assisting prisoners to escape ....                                | Felony .....                                                                                 | 2 & 3 Vict. c. 56, s. 8                                                                            |
| <b>Queen's Stores.</b>                                            |                                                                                              |                                                                                                    |
| Unlawfully having them .....                                      | Misdemeanor ....                                                                             | 9 & 10 W. 3, c. 41, s.<br>2; 9 G. 1, c. 8, s.<br>4; 17 G. 2, c. 40,<br>s. 10                       |



| Penal Servitude.                          | Imprisonment, &c.                                            | Where to be tried.     | Costs.            |
|-------------------------------------------|--------------------------------------------------------------|------------------------|-------------------|
| Death .....                               | .....                                                        | Assizes or Cl. Cr. Ct. | Costs.            |
| For life, or not less than 15 years       | Or imp. h. l. for not more than 3 years                      | Same                   | Costs.            |
| For 7, or not less than 3 years           | Same .....                                                   | Sessions               | Costs.            |
| For life, or not less than 3 years        | Or imp. h. l. for not more than 4 years                      | Assizes                | Costs.            |
| For not more than 14 or less than 3 years | Or imp. h. l. for not more than 3 years                      | Sessions               | Costs.            |
| For life, or not less than 3 years        | Or imp. h. l. for not more than 4 years                      | Assizes                | Costs.            |
| For life.....                             | .....                                                        | Assizes                | Costs.            |
| .....                                     | Fine or imp. or both                                         | Sessions               |                   |
| .....                                     | Same .....                                                   | Same                   |                   |
| .....                                     | Same .....                                                   | Same                   |                   |
| For life, or not less than 3 years        | Or imp. h. l. for not more than 4 years                      | Assizes                | Costs.            |
| .....                                     | .....                                                        | Sessions               | Costs, if felony. |
| For life, or not less than 15 years       | Or imp. h. l. for not more than 3 years                      | Assizes                | Costs.            |
| For not more than 14 years                | .....                                                        | Sessions               | Costs.            |
| .....                                     | Forfeiture of the goods and £200; or whipping; or imp. h. l. |                        |                   |



| OFFENCE.                                                       | Felony<br>or Misdemeanor. | Statute.                                         |
|----------------------------------------------------------------|---------------------------|--------------------------------------------------|
| <b>Queen's Stores—continued.</b>                               |                           |                                                  |
| Second offence .....                                           | Misdemeanor .....         | 39 & 40 G. 3, c. 89,<br>ss. 5, 7                 |
| Selling, having, or concealing ..                              | Felony .....              | 55 G. 3, c. 127; 39 &<br>40 G. 3, c. 89, s. 1    |
| Defacing the marks .....                                       | Felony .....              | 39 & 40 G. 3, c. 89,<br>s. 7                     |
| Burning or destroying them.....                                | Felony .....              | 12 G. 3, c. 24 .....                             |
| Stealing or embezzling them.....                               | Felony .....              | 22 C. 2, c. 5; 4 G. 4,<br>c. 54                  |
| <b>Rape.</b>                                                   |                           |                                                  |
| Rape .....                                                     | Felony .....              | 4 & 5 Vict. c. 56, s. 3.                         |
| Procuring the defilement of girls                              | Misdemeanor ....          | 12 & 13 Vict. c. 76,<br>s. 1                     |
| <b>Receiving Stolen Goods.</b>                                 |                           |                                                  |
| Where the principal is guilty of<br>a felony                   | Felony .....              | 7 & 8 G. 4, c. 29, s.<br>54                      |
| Where the principal is guilty of<br>a misdemeanor              | Misdemeanor ....          | Id. s. 55 .....                                  |
| <b>Registers of Baptism, &amp;c.</b>                           |                           |                                                  |
| Giving false particulars to be in-<br>serted in register       | Misdemeanor ....          | 6 & 7 W. 4, c. 86, s.<br>41                      |
| <b>Rescue.</b>                                                 |                           |                                                  |
| If party rescued convicted of<br>felony                        | Felony .....              | C. L.; and 1 & 2 G. 4,<br>c. 88, s. 1            |
| If of misdemeanor .....                                        | Misdemeanor ....          | C. L.....                                        |
| If not convicted, or afterwards<br>acquitted                   | Misdemeanor ....          | C. L.....                                        |
| Rescue of one convicted or com-<br>mitted for murder           | Felony .....              | 25 G. 2, c. 37, s. 9;<br>1 Vict. c. 91, ss. 1, 2 |
| <b>Rescue of a Distress.</b>                                   |                           |                                                  |
| Breaking the pound to rescue a<br>distress for rent, impounded | Misdemeanor ....          | C. L.....                                        |



| Penal Servitude.                    | Imprisonment, &c.                                      | Where to be tried. | Costs. |
|-------------------------------------|--------------------------------------------------------|--------------------|--------|
| For 14 years . . . . .              | Or whipping, fine or imp.                              | Sessions           |        |
| Same . . . . .                      | .....                                                  | Sessions           | Costs. |
| Same . . . . .                      | Or whipping, fine or imp.                              | Sessions           | Costs. |
| Death . . . . .                     | .....                                                  | Assizes            | Costs. |
| For life, or not less than 3 years  | Or imp. h. l. for not more than 7 years                | Assizes            | Costs. |
| For life.....                       | .....                                                  | Assizes            | Costs. |
| .....                               | Imp. h. l. for not more than 2 years                   | Sessions           | Costs. |
| For 14 years, or not less than 3    | Or imp. h. l. for not more than 3 years                | Sessions           | Costs. |
| For 7, or not less than 3 years     | Or imp. h. l. for not more than 2 years                | Sessions           | Costs. |
| Same . . . . .                      | Or imp. h. l. for not more than 7 years                | Assizes            |        |
| Same . . . . .                      | Or imp. h. l. for not more than 3 years or less than 1 | Sessions           | Costs. |
| .....                               | Fine, or imp. or both                                  | Sessions           |        |
| .....                               | Same . . . . .                                         | Sessions           |        |
| For life, or not less than 15 years | Or imp. h. l. for not more than 3 years                | Assizes            | Costs. |
| .....                               | Fine, or imp. or both                                  | Sessions           |        |



| OFFENCE.                                                 | Felony<br>or Misdemeanor. | Statute.                                              |
|----------------------------------------------------------|---------------------------|-------------------------------------------------------|
| <b>Riot.</b>                                             |                           |                                                       |
| Riot .....                                               | Misdemeanor .....         | C. L.....                                             |
| Opposing proclamation under the<br>Riot Act              | Felony .....              | 1 G. 1, st. 2, c. 5, s. 5;<br>1 Vict. c. 91, ss. 1, 2 |
| Rioters remaining together after<br>proclamation         | Felony .....              | 1 G. 1, st. 2, c. 5, s. 1;<br>1 Vict. c. 91, ss. 1, 2 |
| <b>Seamen.</b>                                           |                           |                                                       |
| Forcing a seaman on shore or<br>leaving him abroad       | Misdemeanor .....         | 7 & 8 Vict. c. 112, s.<br>47                          |
| <b>Sedition.</b>                                         |                           |                                                       |
| Seditious words .....                                    | Misdemeanor .....         | C. L.....                                             |
| <b>Seditious Meetings.</b>                               |                           |                                                       |
| Seditious meetings .....                                 | Misdemeanor .....         | C. L.....                                             |
| Unlawful combinations and con-<br>federacies             | Misdemeanor .....         | 57 G. 3, c. 19, ss. 2,<br>3, 8                        |
| <b>Ship.</b>                                             |                           |                                                       |
| Purchasing anchors, boats, goods<br>found at sea, &c.    | Felony .....              | 9 & 10 Vict. c. 99, s.<br>29                          |
| Taking them to a foreign port,<br>and there selling them | Felony .....              | Id. s. 31 .....                                       |
| Cutting away or defacing buoy<br>ropes                   | Felony .....              | Id. s. 28 .....                                       |
| <b>Smuggling.</b>                                        |                           |                                                       |
| Making signals to smuggling ves-<br>sels                 | Misdemeanor .....         | 16 & 17 Vict. c. 107,<br>s. 244                       |
| Armed assemblies for smuggling                           | Felony .....              | Id. s. 248.....                                       |
| Shooting at boats, or wounding<br>officers               | Felony .....              | Id. s. 249.....                                       |
| One of several smugglers being<br>armed or disguised     | Felony .....              | Id. s. 250.....                                       |
| Assaulting or resisting officers<br>with violence        | Misdemeanor .....         | 16 & 17 Vict. c. 107,<br>s. 251                       |
| <b>Soliciting to the Commis-<br/>sion of an Offence.</b> | Misdemeanor .....         | C. L.....                                             |
| <b>Spring Guns, &amp;c.</b>                              |                           |                                                       |
| Spring guns or man traps, &c.,<br>setting                | Misdemeanor .....         | 7 & 8 G. 4, c. 18, s. 1                               |



| Penal Servitude.                                                                         | Imprisonment, &c.                                                                                 | Where<br>to be tried.                    | Costs.                             |
|------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------|------------------------------------|
| .....<br>For life, or not less<br>than 15 years<br>Same .....                            | Same .....<br>Or imp. h. l. for not<br>more than 3 years<br>Same .....                            | Sessions<br>Assizes<br><br>Assizes       | Costs.<br>Costs.<br><br>Costs.     |
| .....                                                                                    | Fine, or imp. or both                                                                             | Sessions                                 |                                    |
| .....                                                                                    | Same .....                                                                                        | Assizes                                  |                                    |
| .....<br>For 7, or not less than<br>3 years                                              | Same .....<br>Or imp. h. l. for not<br>more than 2 years                                          | Assizes<br>Assizes                       |                                    |
| For 14 years, and not<br>less than 3<br>For 7, or not less than<br>3 years<br>Same ..... | Or imp. h. l. for not<br>more than 3 years<br>.....<br>Or imp. h. l. for not<br>more than 3 years | Sessions<br><br>Sessions<br><br>Sessions | Costs.<br><br>Costs.<br><br>Costs. |
| .....                                                                                    | Fine £100, or imp.<br>h. l. for not more<br>than 1 year                                           | Sessions                                 |                                    |
| For life, or not less<br>than 15 years<br>Same .....                                     | Or imp. h. l. for not<br>more than 3 years<br>Same .....                                          | Assizes<br><br>Assizes                   | Costs.<br><br>Costs.               |
| For 7, or not less than<br>3 years<br>For 7, or not less than<br>3 years                 | .....<br>Or imp. h. l. for not<br>more than 3 years                                               | Sessions<br><br>Sessions                 | Costs.<br><br>Costs.               |
| .....                                                                                    | Fine, or imp. or both                                                                             | Sessions                                 |                                    |
| .....                                                                                    | Same .....                                                                                        | Sessions                                 |                                    |



| OFFENCE.                                               | Felony<br>or Misdemeanor. | Statute.                                   |
|--------------------------------------------------------|---------------------------|--------------------------------------------|
| <b>Stage Coaches.</b>                                  |                           |                                            |
| Forging plates .....                                   | Misdemeanor .....         | 2 & 3 W. 4, c. 120,<br>s. 32               |
| Injury by furious driving, &c. ..                      | Misdemeanor .....         | 1 G. 4, c. 4 .....                         |
| <b>Stamps.</b>                                         |                           |                                            |
| Having forged dies, stamps, &c.                        | Felony .....              | 3 & 4 W. 4, c. 97, s.<br>12                |
| <b>Subsequent Felony.</b>                              |                           |                                            |
| Larceny after a previous conviction for felony         | Felony .....              | 16 & 17 Vict. c. 99,<br>s. 12              |
| Felony after a previous conviction                     | Felony .....              | 7 & 8 G. 4, c. 28, ss.<br>9, 11            |
| <b>Transportation.</b>                                 |                           |                                            |
| Aiding convicts to escape .....                        | Felony .....              | 16 G. 2, c. 31, s. 3..                     |
| Rescuing them, or furnishing them with means of escape | .....                     | 5 G. 4, c. 84, s. 22..                     |
| Being at large before the expiration of sentence       | Felony .....              | 5 G. 4, c. 84, s. 22;<br>4 & 5 W. 4, c. 67 |
| <b>Treason, &amp;c.</b>                                |                           |                                            |
| Compassing the death of the king                       | Treason .....             | 25 Ed. 3, st. 5, c. 2                      |
| Violating the king's wife, &c. ..                      | Same .....                | Id. ....                                   |
| Levying war .....                                      | Same .....                | Id. ....                                   |
| Being adherent to the king's enemies                   | Same .....                | Id. ....                                   |
| Slaying the chancellor or judges                       | Same .....                | Id. ....                                   |
| Felony in compassing the death, &c., of the queen      | Felony .....              | 11 Vict. c. 12, s. 3..                     |
| Attempting to fire at, or do injury to the queen       | High misdemeanor          | 5 & 6 Vict. c. 51, s. 2                    |
| <b>Unnatural Offences.</b>                             |                           |                                            |
| Sodomy or bestiality .....                             | Felony .....              | 9 G. 4, c. 31, s. 15..                     |



| Penal Servitude.                                   | Imprisonment, &c.                                          | Where to be tried. | Costs.              |
|----------------------------------------------------|------------------------------------------------------------|--------------------|---------------------|
| .....                                              | Fine, or imp. h. l. or both                                | Sessions           |                     |
| .....                                              | Fine, or imp. or both                                      | Sessions           |                     |
| For life, or not less than 3 years                 | Or imp. h. l. for not more than 4 years, nor less than 2   | Assizes            | Costs.              |
| .....                                              | Penal servitude for not more than 10 years nor less than 4 | Sessions           | Costs.              |
| Same .....                                         | Or imp. h. l. for not more than 4 years                    | Assizes            | Costs.              |
| For 7, or not less than 3 years                    | .....                                                      | Sessions           | Costs.              |
| Punishment the same as the convict                 | .....                                                      | .....              | Costs, if a felony. |
| For life .....                                     | And previously, imp. h. l. for not more than 4 years       | Assizes            | Costs.              |
| Death .....                                        | .....                                                      | Assizes            |                     |
| Death .....                                        | .....                                                      | Same               |                     |
| Same .....                                         | .....                                                      | Same               |                     |
| Same .....                                         | .....                                                      | Same               |                     |
| Same .....                                         | .....                                                      | Same               |                     |
| Penal servitude for life, or not less than 3 years | Or imp. h. l. for not more than 2 years                    | Same               |                     |
| For 7, or not less than 3 years                    | Or imp. h. l. for not more than 3 years                    | Same               |                     |
| Death .....                                        | .....                                                      | Same               | Costs.              |



*Penal Servitude.*

*By Stat. 16 & 17 Vict. c. 99.—An Act to substitute, in certain Cases, other Punishment in lieu of Transportation ;—it is enacted :—*

Sect. 1. *No person to be sentenced to transportation, except for life or for fourteen years or upwards.]* After the commencement of this Act no person shall be sentenced to transportation who if this Act had not been passed would not have been liable to be transported for life, or for a term of fourteen years or upwards ; and no person shall be sentenced to transportation for any term less than fourteen years.

2. *Sentence of penal servitude instead of transportation for less than fourteen years.]* Any person who if this Act had not been passed might have been sentenced to transportation for a term of less than fourteen years shall be liable, at the discretion of the court, to be kept in penal servitude for such term as hereinafter mentioned.

3. *Persons liable to transportation for fourteen years or upwards or for life may still be sentenced to transportation, or to penal servitude instead ]* Any person who if this Act had not been passed might have been sentenced to transportation for a term of fourteen years or upwards or for life shall, after the commencement of this Act, be liable, at the discretion of the court, to be sentenced either to such transportation for fourteen years or upwards or for life, or to be kept in penal servitude for such term as under this Act may be awarded instead of such transportation.

4. *Terms of penal servitude which are to be awarded instead of the present terms of transportation.]* The terms of penal servitude to be awarded instead of the transportation to which any offender would have been liable if this Act had not been passed shall be as follows : (that is to say,)

Instead of transportation for seven years or for a term not exceeding seven years, penal servitude for the term of four years :

Instead of any term of transportation exceeding seven years and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years :

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years :

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years :

Instead of transportation for the term of life, penal servitude for the term of life :

And in every case where, at the discretion of the court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

5. *Conditional pardons to be allowed with reference to the substituted punishment, as in cases of pardons on condition of transporta-*



*tion.*] Whenever Her Majesty, or the lord lieutenant, or other chief governor or governors of Ireland for the time being, shall be pleased to extend mercy to any offender convicted of any offence for which he may be liable to the punishment of death, upon condition of his being kept to penal servitude for any term of years or for life, such intention of mercy shall have the same effect and may be signified in the same manner, and all courts, justices, and others shall give effect thereto and to the condition of the pardon in like manner, as in the cases where Her Majesty, or the lord lieutenant, or other chief governor or governors of Ireland for the time, is or are now pleased to extend mercy upon condition of transportation beyond seas, the order for the execution of such punishment as her Majesty, or the lord lieutenant or other chief governor or governors of Ireland for the time being, may have made the condition of her, his, or their mercy being substituted for the order for transportation.

6. *Persons under sentence or order of penal servitude how to be dealt with.*] Every person who under this Act shall be sentenced or ordered to be kept in penal servitude may, during the term of the sentence or order, be confined in any such prison or place of confinement in any part of the united kingdom, or in any river, port, or harbour of the united kingdom, in which persons under sentence or order of transportation may now by law be confined, or in any other prison in the united kingdom, or in any part of Her Majesty's dominions beyond the seas, or in any port or harbour thereof, as one of Her Majesty's principal secretaries of state may from time to time direct; and such person may during such term be kept to hard labour and otherwise dealt with in all respects as persons sentenced to transportation may now by law be dealt with while so confined.

7. *All Acts, &c., concerning convicts sentenced to transportation made applicable for the purposes of this Act.*] All Acts and provisions of Acts now applicable with respect to persons under sentence or order of transportation shall, so far as may be consistent with the express provisions of this Act, be construed to extend and be applicable to persons under any sentence or order of penal servitude under this Act; and all the powers and provisions contained in the Act of the fifth year of King George the Fourth, chapter eighty-four, authorizing the appointment by Her Majesty from time to time of places of confinement as therein mentioned for male offenders under sentence or order of transportation, and authorizing Her Majesty to order male offenders convicted in Great Britain and under sentence or order of transportation to be kept to hard labour in any part of Her Majesty's dominions out of England, shall extend and be applicable to and for the appointment of by Her Majesty of like places of confinement in any part of the united kingdom for offenders (whether male or female) sentenced under this Act in any part of the united kingdom, and to and for the ordering of such offenders to be kept to hard labour in any part of Her Majesty's dominions out of England; and all the provisions of the said Act concerning the removal to or from and confinement in the places of confinement in or out of England, appointed under the said Act, of the offenders therein mentioned, and all Acts and provisions of Acts now in force concerning or relating to the regulation and government



of such places of confinement, and the custody, treatment, management, and control of or otherwise in relation to the offenders confined therein, shall, so far as the same may be consistent with the express provisions of the Act, extend and be applicable to and for the removal to and from and confinement in the places of confinement appointed under this Act of the offenders sentenced in any part of the united kingdom, and otherwise be applicable to and in respect of such places of confinement and the offenders to be confined therein.

8. *Powers of secretary of state to be exercised in Ireland by lord lieutenant.*] Provided always, That all the powers vested under this Act, expressly or by reference to any other Act, in one of Her Majesty's principal secretaries of state, shall in relation to places of confinement in Ireland, or where such powers are otherwise to be exercised in Ireland, be exercised by the lord lieutenant or other chief governor or governors of Ireland; and where the signature of one of Her Majesty's principal secretaries of state would be necessary in relation to the exercise of such powers, the signature of such lord lieutenant or chief governor or governors, or his or their chief secretary, shall be sufficient in the case of the exercise of such powers by such lord lieutenant or chief governor or governors.

9. *Her Majesty may grant licences to be at large to convicts under sentence of transportation.*] It shall be lawful for her Majesty, by an order in writing under the hand and seal of one of Her Majesty's principal secretaries of state, to grant to any convict now under sentence of transportation, or who may hereafter be sentenced to transportation, or to any punishment substituted for transportation by this Act, a licence to be at large in the united kingdom and the channel Islands, or in such part thereof respectively as in such licence shall be expressed, during such portion of his or her term of transportation or imprisonment, and upon such conditions in all respects as to Her Majesty shall seem fit; and it shall be lawful for Her Majesty to revoke or alter such licence by a like order at Her Majesty's pleasure.

10. *Holder of licence not to be imprisoned, &c., by reason of his sentence.*] So long as such licence shall continue in force and unrevo-  
ked such convict shall not be liable to be imprisoned or transported by reason of his or her sentence, but shall be allowed to go and remain at large according to the term of such licence.

11. *If licence revoked, the convict may be apprehended, and committed to prison.*] Provided always, that if it shall please Her Majesty to revoke any such licence as aforesaid it shall be lawful for one of Her Majesty's principal secretaries of state, by warrant under his hand and seal, to signify to any one of the police magistrates of the metropolis that such licence has been revoked, and to require such magistrate to issue his warrant under his hand and seal for the apprehension of the convict to whom such licence was granted, and such magistrate shall issue his warrant accordingly, and such warrant shall and may be executed by the constable to whom the same shall be delivered for that purpose in any part of the united kingdom, or in the isles of Jersey, Guernsey, Alderney, or Sark, and shall have the same force and effect in all the said places as if the same had been originally issued or subsequently indorsed by a justice of the peace



or magistrate, or other lawful authority having jurisdiction in the place where the same shall be executed; and such convict when apprehended under such warrant shall be brought, as soon as he conveniently may be, before the magistrate by whom the said warrant shall have been issued, or some other magistrate of the same court, and such magistrate shall thereupon make out his warrant under his hand and seal for the recommitment of such convict to the prison or place of confinement from which he was released by virtue of the said licence, and such convict shall be so recommitted accordingly, and shall thereupon be remitted to his or her original sentence, and shall undergo the residue thereof as if no such licence had been granted.

12. *Persons convicted of larceny after previous conviction for felony not to be transported.*] No person shall, after the commencement of this Act, be liable to be transported by reason only of a conviction for larceny after a previous conviction for felony, but every such person so convicted may be punished by penal servitude for any term not less than four years and not more than ten years.

13.—*Queen's prerogative.*] Provided always, That nothing in this Act contained shall in any manner affect Her Majesty's royal prerogative of mercy, or any prerogative of mercy vested in the lord lieutenant or other chief governor or governors of Ireland for the time being.

14. *Discretion of courts as to alternative punishments not to be affected.*] Provided also, That nothing herein contained shall interfere with or affect the authority or discretion of any court in respect of any punishment which such court may now award or pass on any offender other than transportation, but where such other punishment may be awarded at the discretion of the court, instead of transportation, or in addition thereto, the same may be awarded instead of or (as the case may be) in addition to the punishment substituted for transportation under this Act.

15. *Transportation to include banishment.*] For the purposes of this Act, the term "Transportation" shall include banishment beyond the seas.

16. *Commencement of Act.*]—This Act shall commence from and after the first day of September one thousand eight hundred and fifty-three.



*List of Law Phrases.*

*Arraign.*—A prisoner is arraigned, when he is indicted and brought to trial at the suit of the king.

*Arrest of Judgment.*—Upon good cause being shown, judgment may be arrested after the verdict is given, either in civil or criminal cases.

*Assumpsit.*—A verbal promise, made upon a consideration, to perform or pay anything to another.

*Attachment.*—A court of record may grant an attachment on a bare suggestion, or on its own knowledge. It is also granted for a contempt of the king's writ, or for any contempt of the rules or awards of the courts, or for contemptuous words or writings concerning the same.

*Baron and Feme.*—Husband and Wife.

*Bill of Sale.*—A solemn contract under seal, whereby a man passes the right and interest he has in the goods and chattels in his possession.

*Bond Fide.*—Anything done without fraud or deceit.

*Bottomry.*—A person lending a sum of money to a merchant to traffic, who is to be paid a greater sum on the return of a certain ship, the lender running all risks as to the voyage.

*Calling the Plaintiff.*—When the plaintiff or his council conceives that he has not evidence to support the issue, he submits to be non-suited.

*Capias.*—A writ of execution to take the defendant and make him answer the plaintiff, after judgment.

*Caveat.*—A process in the spiritual court to stop the institution of a clerk to a benefice, or probate of a will.

*Certiorari.*—A writ issuing out of the court of chancery or King's Bench to certify and remove indictments, &c., from an inferior court into the court of King's Bench.

*Cestui que use.*—He to whose use any other man is enfeoffed of lands and tenements.

*Cognovit Actionem.*—Where a defendant acknowledges the plaintiff's cause to be just and true, and suffers judgment to be entered against him without proceeding to a trial.

*Compounding Felony.*—Where the party robbed not only knows the felon, but takes his goods again, or other amends not to prosecute.

*Conge d' Elire.*—A license from the king to proceed to the election of a bishop.

*Conjugal rights.*—A suit for the restitution of rights is brought when the husband or wife lives separate from the other without sufficient reason; and the ecclesiastical court, if it be desired, may compel them to live together again.

*Contempt of Court.*—See *Attachment*.

*Court of Piepowder.*—Held in fairs, to do justice to buyers and sellers, and for disturbances committed therein. So called from the expeditious manner in which a cause is heard,—“before the dust goes off the feet of the plaintiffs and defendants.”



*Declaration.*—A legal specification of the cause of action.

*De Facto.*—A thing actually done.

*Demurrer.*—A stop to an action upon a point of difficulty, which must be determined by the court before any further proceedings can take place.

*Deodand.*—Whatever personal chattel is the immediate occasion of the death of a person is forfeited to the king.

*Domesday Book.*—A record made in the time of William the Conqueror, and contains a survey of all the lands of England, excepting the lands of Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire.

*Escheat.*—Where land becomes forfeited to the lord in consequence of the failure of issue, or on account of the felony of the tenant, &c.

*Essoign.*—An excuse for a person who is summoned to appear to answer to an action. *Essoign-day* is the first day of term.

*Estreat.*—The exact copy of the record of fines, &c., imposed on the rolls of a court, to be levied by the proper officer.

*Eundo.*—Going.

*Eundo et Redeundo.*—Going and returning.

*Ex-officio.*—The power to do certain acts by virtue of an office. An *ex-officio* information may be filed by the attorney-general, without an application to any court, or giving the defendant an opportunity of showing cause why it should not be filed.

*Ex Post Facto.*—Something done after another thing that was committed before.

*First Fruits.*—The profits of every spiritual living for the first year, according to the valuation in the king's books.

*Forma Pauperis.*—Persons swearing themselves not worth £5, are to have an attorney and counsel assigned them without fee, and are to be excused from paying costs when plaintiffs.

*General Issue.*—A plea to the fact of *not guilty* in criminal cases.

*Heir Looms.*—Household goods and chattels which descend to the heir with the house by custom, and are not devisable by will.

*Homicide.*—The killing of any human creature.

*Ignoramus.*—("We are ignorant.")—Written on a bill of indictment when rejected by the grand jury.

*Imparlance.*—Time to plead. Leave given by the court to a defendant to answer the plaintiff at some other time.

*In Esse.*—A thing in actual being.

*Larceny.*—Stealing another's goods.

*Levari Facias.*—A writ of execution directed to the sheriff for levying a sum of money upon the goods and chattels of a person who has forfeited his recognizance.

*Liberty to speak to the Prosecutor.*—If the defendant pay half the amount of the fine imposed by the court into the hands of the prosecutor, the other half is remitted, and he is immediately discharged.

*Mayhem.*—A corporal hurt, by which a man is deprived of the use of a member proper for his defence in fight.

*Mainprise.*—The receiving of a person into friendly custody, upon security given that he shall be forthcoming at the time and place assigned.



*Maintenance*.—An officious intermeddling in a suit, by assisting or maintaining with money to prosecute or defend.

*Misdemeanor*.—Comprehends all indictable offences which do not amount to felony.

*Misnomer*.—The using one name for another, as John for Thomas, &c.

*Misprision*.—A neglect, oversight, or contempt.—A person knowing of treason or felony, and not revealing it, is guilty of misprision.

*Mittimus*.—A writ for removing of records from one court to another; also, a precept from a magistrate to a gaoler for the receiving of an offender into custody.

*Molliter Manus Imposuit*.—A justification in a case of trespass; actions of assault are called by this name, from the words,—“*gently laid his hands upon him.*”

*Mulct*.—A fine set upon a person for some misdemeanor.

*Ne Exeat Regno*.—A writ to restrain a person from going out of the kingdom without the king's licence.

*Nemine Contradicente*.—Words used to signify the unanimous consent of the members of the house of commons, &c., to a vote or resolution.

*Nihil Capiat per Breve*.—Judgment given against the plaintiff, either in bar of his action, or in abatement of his writ or bill.

*Nihil, or Nil Debet*.—A plea to an action of debt when the money is paid.

*Nolle Prosequi*.—Where a plaintiff will not proceed any further with the action.

*Non Compos Mentis*.—A person of unsound mind, memory, &c.

*Non est Inventus*.—The sheriff's return to a writ when a defendant is not to be found within his jurisdiction.

*Non Pros*. See “*Nolle prosequi.*”

*Nonsuit*.—A renunciation of a suit upon the discovery of some error or defect, when the matter is so far proceeded in, that the jury are ready to deliver their verdict.

*Nul Tort*.—A plea that no wrong was done.

*Overt Act*.—An open act, which by law must be manifestly proved.

*Oyer and Terminer*.—A commission directed to the judges; by virtue thereof they have power to hear and determine treason, felony, and trespass.

*Pains and Penalties*.—An Act of parliament to serve a special purpose.

*Parole*.—Word of mouth.

*Per Quod*.—Words made use of by a plaintiff in his declaration, without which his action would not be maintainable.

*Polygamy*.—Having a plurality of wives or husbands at one time.

*Posse Comitatus*.—(“The power of the county.”) In case of riot, &c., the sheriff has power to raise any number of men to suppress the same.

*Premunire*.—(“To be forewarned.”) The writ of *Premunire* is issued for offences of a highly criminal nature, although not amounting to capital. The words of the writ are as follow: “*Premunire facias A. B.*—Cause A. B. to be forewarned that he appear before us to answer the contempt wherewith he stands charged.”



*Pro Confesso*.—Where a bill is exhibited in Chancery, to which the defendant appears, and is afterwards in contempt for not answering the matter of the bill, is to be taken *as if it were confessed* by the defendant.

*Protocol*, the first copy. The entry of an instrument in the book of a notary, &c., so that if the original be lost, the copy may be admitted as evidence.

*Puisne*.—"Younger." The several judges and barons, not chiefs, are called *puisne* judges, &c.

*Quasi Contract*.—An implied contract.

*Quid pro Quo*.—The mutual consideration of a contract.

*Quietus Est* granted to a sheriff, &c., will discharge him from all accounts due to the king.

*Qui Tam* action, so called from a person suing for the king as well as for himself. It is also called a "*Popular Action*."

*Quoad Hoc*.—A term used in law reports to signify,—"*as to the thing named,—the law is so,*" &c.

*Quo Warranto*.—A writ which lies against a person or corporation, that usurps any franchise or liberty against the king, without good title.

*Salique Law*.—A law by which males only are allowed to inherit. This law was made by Pharamond, king of the Franks.

*Scandalum Magnatum*.—Words spoken in derogation of a peer or any great officer of the kingdom.

*Scire Facias*.—So called from the words of the writ, by which the sheriff is commanded to "*make known*" to a party how he is liable to answer.

*Sine Die*.—Without mentioning any day for a cause to be heard.

*Solvit ad Diem*.—A plea in an action of debt, bond, &c., that the money *was paid at the day* limited.

*Specialty*.—A bond, bill, or other instrument under the hand and seal of the parties.

*Supersedeas*.—A writ of supersedeas lies in a number of cases, and signifies, in general, a command to stay some ordinary proceeding.

*Toties Quoties*.—As often as the thing shall happen, &c.

*Venire Facias*.—A writ judicial awarded to the sheriff to cause a jury in the neighbourhood to appear when a cause is brought to issue to try the same.

*Vi et Armis*.—With force and arms. Words used in an indictment.

*Viva Voce*.—Is where a witness is examined in open court.

*Usance*.—A calender month; from January 1st to February 1st.

*Wager of Law*.—A defendant puts in sureties, that at such a day he will make his law, that is, take the benefit which the law has allowed him.

*Writ of Right*.—The great and final remedy for him that is injured by *ouster*, or privation of his freehold.



*List of Abbreviations quoted in this Work.*

|                             |       |                                           |
|-----------------------------|-------|-------------------------------------------|
| <i>Ad. &amp; El.</i>        | - - - | Adolphus & Ellis.                         |
| <i>Arch. J. P.</i>          | - - - | Archbold's Justice of the Peace.          |
| <i>B. &amp; C.</i>          | - - - | Barnewall & Cresswell.                    |
| <i>Burr.</i>                | - - - | Burrow's Reports.                         |
| <i>B. &amp; Ald.</i>        | - - - | Barnewall & Alderson.                     |
| <i>Bosc.</i>                | - - - | Boscawen.                                 |
| <i>Bac. Ab.</i>             | - - - | Bacon's Abridgment.                       |
| <i>Brod. &amp; Bing.</i>    | - - - | Broderip & Bingham's Reports.             |
| <i>Bos. &amp; Pull.</i>     | - - - | Bosanquet & Puller's Reports.             |
| <i>B. N. P.</i>             | - - - | Buller's Nisi Prius.                      |
| <i>Bing.</i>                | - - - | Bingham's Reports.                        |
| <i>B. Moore</i>             | - - - | J. B. Moore's Reports.                    |
| <i>Bla. Com.</i>            | - - - | Blackstone's Commentaries.                |
| <i>Bull.</i>                | - - - | Buller's Reports.                         |
| <i>B. G. L.</i>             | - - - | Bell's Game Laws.                         |
| <i>C. &amp; P.</i>          | - - - | Carrington & Payne's Reports.             |
| <i>Ch. B.</i>               | - - - | Chitty's Burn's Justice.                  |
| <i>Car. &amp; Marsh.</i>    | - - - | Carrington & Marshman's Reports.          |
| <i>Ch. C. L.</i>            | - - - | Chitty's Criminal Law.                    |
| <i>Camp.</i>                | - - - | Campbell's Reports.                       |
| <i>C. N. P.</i>             | - - - | Cases Nisi Prius.                         |
| <i>Cowp.</i>                | - - - | Cowper's Reports.                         |
| <i>C. M. &amp; R.</i>       | - - - | Crompton, Meeson & Roscoe.                |
| <i>Co. Rep.</i>             | - - - | Coke's Reports.                           |
| <i>C. C.</i>                | - - - | Crown Cases.                              |
| <i>Car. C. L.</i>           | - - - | Carrington's Common Law.                  |
| <i>Co. Lit.</i>             | - - - | Coke upon Littleton.                      |
| <i>Cro. Eliz.</i>           | - - - | Croke's Reports in the time of Elizabeth. |
| <i>Cro. Jac.</i>            | - - - | Croke's Reports in the time of James.     |
| <i>Dea. Crim. Dig.</i>      | - - - | Deacon's Criminal Digest.                 |
| <i>Doug.</i>                | - - - | Douglas's Reports.                        |
| <i>Dick.</i>                | - - - | Dicken's Reports.                         |
| <i>Dowl. &amp; Ry. Mag.</i> |       |                                           |
| <i>Cas.</i>                 | - - - | Dowling and Ryland's Magistrates' Cases.  |
| <i>D, G. L.</i>             | - - - | Deacon's Game Laws.                       |
| <i>Esp.</i>                 | - - - | Espinasse's Reports.                      |
| <i>East</i>                 | - - - | East's Reports.                           |
| <i>Fort.</i>                | - - - | Fortescue's Reports.                      |
| <i>Gale &amp; D.</i>        | - - - | Gale & Davison's Reports.                 |
| <i>Hawk.</i>                | - - - | Hawkins's Pleas of the Crown.             |
| <i>Hale's P. C.</i>         | - - - | Hale's Pleas of the Crown.                |
| <i>Hale's C. L.</i>         | - - - | Hale's Common Law.                        |
| <i>Holt</i>                 | - - - | Holt's Reports.                           |
| <i>Inst.</i>                | - - - | Coke's Institutes.                        |
| <i>K. B.</i>                | - - - | King's Bench.                             |
| <i>J. P.</i>                | - - - | Justice of the Peace.*                    |

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\* The "*Justice of the Peace and County, Borough, Poor Law Union, and Parish Law Recorder*," published every Saturday : Shaw & Sons, Fetter-lane.



|                         |       |                                  |
|-------------------------|-------|----------------------------------|
| <i>Lev.</i>             | - - - | Levinz's Reports.                |
| <i>L. J. N. S.</i>      | - - - | Law Journal, New Series.         |
| <i>Leach, C. C.</i>     | - - - | Leach's Crown Cases.             |
| <i>Ld. Raym.</i>        | - - - | Lord Raymond's Reports.          |
| <i>Lofft</i>            | - - - | Lofft's Reports.                 |
| <i>Moo. &amp; Rob.</i>  | - - - | Moody & Robinson's Reports.      |
| <i>Mod.</i>             | - - - | Modern Reports.                  |
| <i>M. C.</i>            | - - - | Magistrates' Cases.              |
| <i>M. &amp; Sel.</i>    | - - - | Maule & Selwyn's Reports.        |
| <i>M. &amp; Wels.</i>   | - - - | Messon & Welsby's Reports.       |
| <i>M'Clel. &amp; Y.</i> | - - - | M'Cleland & Younge's Reports.    |
| <i>Man. &amp; R.</i>    | - - - | Manning & Ryland's Reports.      |
| <i>Nev. &amp; Man.</i>  | - - - | Nevile & Manning's Reports.      |
| <i>New Rep.</i>         | - - - | New Reports.                     |
| <i>Per. &amp; D.</i>    | - - - | Perry & Davison's Reports.       |
| <i>Q. B.</i>            | - - - | Queen's Bench.                   |
| <i>Rol. Ab.</i>         | - - - | Rolle's Abridgment.              |
| <i>Rol. Rep.</i>        | - - - | Rolle's Reports.                 |
| <i>R. &amp; M.</i>      | - - - | Russell & Mylne.                 |
| <i>Russ. &amp; Ry.</i>  | - - - | Russell & Ryan.                  |
| <i>R. &amp; M.</i>      | - - - | Ryan & Moody.                    |
| <i>Stra.</i>            | - - - | Strange's Reports.               |
| <i>Say.</i>             | - - - | Sayer's Reports.                 |
| <i>S. C.</i>            | - - - | Same Case.                       |
| <i>Selw. N. P.</i>      | - - - | Selwyn's Nisi Prius.             |
| <i>Salk.</i>            | - - - | Salkeld's Reports.               |
| <i>Skin.</i>            | - - - | Skinner's Reports.               |
| <i>Scott, N. R.</i>     | - - - | Scott's New Reports.             |
| <i>Stark. R.</i>        | - - - | Starkie's Reports.               |
| <i>Saund. P. S. C.</i>  | - - - | Saunders on Summary Convictions. |
| <i>T. R.</i>            | - - - | Term Reports.                    |
| <i>T. Raym.</i>         | - - - | T. Raymond's Reports.            |
| <i>Taunt.</i>           | - - - | Taunton's Reports.               |
| <i>Vin. Abr.</i>        | - - - | Viner's Abridgment.              |
| <i>Wils.</i>            | - - - | Wilson's Reports.                |
| <i>Wool. on Misd.</i>   | - - - | Woolrych on Misdemeanors.        |
| <i>Yel.</i>             | - - - | Yelverton's Reports.             |



*Flash Language.*

I shall add the flash or cant language used and known by every thief and itinerant beggar in the kingdom, and collected down to the present period. I had in custody a short time ago an old cadger, who had been in almost all the gaols throughout England, and who furnished me, for a trifling fee, with the same. I have since compared it with my own and with others, and made what alterations I thought proper; that is, in leaving out what was old and not now in use.

*The Flash or Cant Language.*

|                                      |           |                        |
|--------------------------------------|-----------|------------------------|
| Sixpence                             | - - - - - | Downer, also sprat.    |
| Shilling                             | - - - - - | Deaner, also twelver.  |
| Two shillings and sixpence           | - - - - - | Alderman.              |
| Bad half-crown                       | - - - - - | Half case.             |
| Five shillings                       | - - - - - | Bull.                  |
| Bad five shillings                   | - - - - - | Case.                  |
| Sovereign                            | - - - - - | Cooter.                |
| Five-pound notes                     | - - - - - | Finnips.               |
| Ten-pound notes                      | - - - - - | Double finnips.        |
| Large notes                          | - - - - - | Long-tailed finnips.   |
| A house                              | - - - - - | Crib.                  |
| The tread-mill                       | - - - - - | Everlasting staircase. |
| Beggar                               | - - - - - | Cadger.                |
| Begging letter                       | - - - - - | Fakement.              |
| Gift of clothes                      | - - - - - | Cant of togs.          |
| Thieves                              | - - - - - | Family men.            |
| To rob                               | - - - - - | To ease.               |
| To rob a gentleman                   | - - - - - | To ease a bloak.       |
| To steal a muff                      | - - - - - | To free a cat.         |
| Boy's lodging-house                  | - - - - - | Padding crib.          |
| Snatching reticules from a carriage  | - - - - - | Culing.                |
| Fortune-telling                      | - - - - - | Dookin.                |
| A shop                               | - - - - - | Chovey.                |
| A silk handkerchief                  | - - - - - | A billy.               |
| A waistcoat                          | - - - - - | A fan.                 |
| A hawker                             | - - - - - | A duffer.              |
| A thief                              | - - - - - | A cross cove.          |
| On thieving                          | - - - - - | On the cross.          |
| Quack doctors                        | - - - - - | Crocusses.             |
| Beggars                              | - - - - - | Croakers.              |
| Buyers of stolen property            | - - - - - | Fences.                |
| Cant language                        | - - - - - | Flash.                 |
| To inform                            | - - - - - | To come it.            |
| Shoes                                | - - - - - | Crab-shells.           |
| A coach                              | - - - - - | Drag.                  |
| Thieving                             | - - - - - | On the game.           |
| Do not say a word, be quiet          | - - - - - | Mum.                   |
| To alter the maker's name in a watch | - - - - - | To christen a yack.    |



|                                                                      |                                                 |
|----------------------------------------------------------------------|-------------------------------------------------|
| To have the works of a watch put<br>into another case - - - - -      | To church a yack.                               |
| One who cuts trunks from car-<br>riages, &c. - - - - -               | A dragsman.                                     |
| A pocket-book - - - - -                                              | Dummy.                                          |
| To be cunning, wary, or sly - - -                                    | Fight cocum.                                    |
| A ring - - - - -                                                     | A fawney.                                       |
| Begging letters - - - - -                                            | The highfly.                                    |
| Housebreakers - - - - -                                              | Cracksmen, pannymen.                            |
| To break into a house - - - - -                                      | To crack a crib.                                |
| Coin - - - - -                                                       | Lowr.                                           |
| A pair of breeches - - - - -                                         | Kicksters.                                      |
| To hustle or rob - - - - -                                           | To flimp.                                       |
| To steal a horse - - - - -                                           | To free a prad.                                 |
| To deceive or cheat - - - - -                                        | To gammon.                                      |
| Bad - - - - -                                                        | Gammy.                                          |
| A fancy girl - - - - -                                               | Jomer.                                          |
| Inside coat-pocket - - - - -                                         | Hip inside.                                     |
| A pair of scissors - - - - -                                         | A pair of snipes.                               |
| Outside coat-pocket - - - - -                                        | Hip outside.                                    |
| Tossing - - - - -                                                    | Goffing.                                        |
| A thief - - - - -                                                    | Gonnoff.                                        |
| To entice on - - - - -                                               | Kidding on.                                     |
| Spurious medicine - - - - -                                          | Gammy stuff.                                    |
| To stupify a person in a brothel -                                   | To hocuss.                                      |
| A window - - - - -                                                   | Glaze.                                          |
| To catch - - - - -                                                   | To grab.                                        |
| Breaking the window in the corner<br>with a knife or a diamond - - - | Starring the glaze.                             |
| Breaking the window with the fist,<br>or taking out a square - - - - | Spanking the glaze.                             |
| To run away - - - - -                                                | To hoop it.                                     |
| A pocket-handkerchief pinned to<br>the pocket for a trap - - - -     | Kidment.                                        |
| Transported - - - - -                                                | Lagged.                                         |
| The prison or treadmill - - - -                                      | The steel.                                      |
| To rob a till - - - - -                                              | To pinch a lob: or draw a<br>damper.            |
| Yellow silk handkerchief - - - -                                     | Yellow man.                                     |
| To be in irons - - - - -                                             | Lagged.                                         |
| A reticule - - - - -                                                 | A soot bag.                                     |
| A till - - - - -                                                     | A lob or damper.                                |
| To hand over the booty to a con-<br>federate or girl - - - - -       | To copbusy.                                     |
| Prison allowance of meat - - - -                                     | A ball.                                         |
| Robbing in shops by two - - - -                                      | Palming.                                        |
| To pick pockets - - - - -                                            | To buzz, buzzmen, clyfakers, con-<br>veyancers. |
| Housebreaking implements - - - -                                     | Screws.                                         |
| To inform - - - - -                                                  | To blow it.                                     |
| To be honest now - - - - -                                           | On the square now.                              |
| A poultry stealer - - - - -                                          | A beaker hunter.                                |



|                                   |       |                      |
|-----------------------------------|-------|----------------------|
| Stealing linen off a hedge        | - - - | Snow-dropping.       |
| Red silk handkerchief             | - - - | Blood-red fancy.     |
| A gentleman                       | - - - | A bloak.             |
| A fancy man                       | - - - | A fancy bloak.       |
| Fellows who go about half naked   |       |                      |
| begging clothes                   | - - - | Shallow coves.       |
| Caught, taken, or disposed of     | - -   | Booked.              |
| Confederate of thimble riggers    | - -   | Nobblers.            |
| A marine-store dealer who buys    |       |                      |
| stolen property                   | - - - | A swag chovey bloak. |
| An associate                      | - - - | A pall.              |
| Bad coin                          | - - - | Gammy lowr.          |
| One's own share                   | - - - | Own regulars.        |
| Catching geese by a bait and hook |       | Snagglings.          |
| A shirt                           | - - - | A mill togg.         |
| A shilling                        | - - - | Breaky leg.          |
| A drinking shop                   | - - - | A boozing ken.       |
| Companions                        | - - - | Mobs.                |
| To snatch                         | - - - | To snam.             |
| To thief                          | - - - | To prig.             |
| To talk                           | - - - | To patter.           |
| To entice another to play         | - -   | Buttoner.            |
| Drunken                           | - - - | Lushy.               |
| Robbing drunken men               | - - - | Ramping.             |
| Gold                              | - - - | Redge.               |
| Shoplifting                       | - - - | Shopbouncing.        |
| Watching                          | - - - | Marking.             |
| Stolen property                   | - - - | Swag.                |
| Inside skirt coat pocket          | - - - | Patent coat.         |
| A person                          | - - - | A pig.               |
| Stealing                          | - - - | Nailing.             |
| To mark a person out for plunder  |       |                      |
| or robbery                        | - - - | To plant.            |
| A policeman                       | - - - | A fly.               |
| Bacon                             | - - - | Sawney.              |
| A girl, (old phrase)              | - - - | Moll.                |
| A woman                           | - - - | A mott.              |
| An accomplice                     | - - - | Stalsman.            |
| Bad money                         | - - - | Sinker.              |
| Umbrella menders                  | - - - | Mushroom fakers.     |
| A walk                            | - - - | A pad.               |
| A horse                           | - - - | A prad.              |
| Match sellers                     | - - - | Spunk fencers.       |
| A passer of bad money             | - - - | Smasher.             |
| To steal from shop doors          | - -   | To pull down.        |
| A shirt                           | - - - | A shaker.            |
| Trampers' lodging-houses          | - -   | A padding ken.       |
| One who steals food               | - - - | A pudding snammer.   |
| Asnuff-box                        | - - - | A sneezer.           |
| Alady                             | - - - | A shikster.          |
| Web of Irish linen                | - - - | Roll of snow.        |
| The broth in prisons              | - - - | Skilly.              |



|                                                      |           |                    |
|------------------------------------------------------|-----------|--------------------|
| Soap                                                 | - - - - - | Slippery.          |
| Boys who creep into houses                           | - -       | Sneaks.            |
| Gin                                                  | - - - - - | Blue ruin.         |
| Bad money                                            | - - - - - | Schofel.           |
| To run away                                          | - - - - - | To speel.          |
| A purse                                              | - - - - - | Skin.              |
| To inform                                            | - - - - - | To split.          |
| Passing bad money                                    | - - - - - | Slumming.          |
| Silk                                                 | - - - - - | A squeeze.         |
| To screen a robbery during the<br>perpetration of it | - - - - - | To stall.          |
| A watch or watcher                                   | - - - - - | A crow.            |
| A share                                              | - - - - - | Regular.           |
| A well-dressed person                                | - - - - - | A swell.           |
| A watch                                              | - - - - - | A yack.            |
| Old rags                                             | - - - - - | Tats.              |
| To pay                                               | - - - - - | To tip.            |
| Clothes                                              | - - - - - | Toggery.           |
| A countryman                                         | - - - - - | A yokel.           |
| To get rid of 5s. pieces                             | - - - - - | Work the bulls.    |
| A village                                            | - - - - - | A wild.            |
| Silver                                               | - - - - - | Wedge.             |
| Giving over thieving                                 | - - - - - | Tied up prigging.  |
| Going without shoes                                  | - - - - - | Gadding the hoof.  |
| To run away with stolen property                     | - - - - - | To speel the drum. |
| To lift a window                                     | - - - - - | To fly a window.   |
| Yellow silk handkerchiefs                            | - - - - - | Yellow men.        |
| Light Blue silk handkerchiefs                        | - - - - - | Watersman.         |
| Silver spoon                                         | - - - - - | Wedge feeder.      |
| Coiners                                              | - - - - - | Bit makers.        |
| Embezzling                                           | - - - - - | Bilking.           |

*Flash.*

I pulled down a Fan and a roll of snow. I starred the Glaze, and snammed 16 Redge Yacks, My Jomer stalled. I took them to a swag Chovey Bloak, and got six Finnips and a Cooter for the Yacks. A cross Cove who had his Regulars Lowr, A fly grabbed him. I am afraid he will blow it. He has been lagged for beaker hunting, was a Mushroom faker, has been on the steel for snamming a wedge sneezer; so I must hoop it. Tell swag Chovey Bloak to christen the Yacks quick.

*Translation.*

I stole from a shop door a waistcoat and a web of Irish linen. I broke the corner of a window and got sixteen gold watches. My fancy girl stood close by me and screened me from observation; I took them to a person who buys stolen property, who gave me six five-pound notes and a sovereign for the watches. A fellow-thief who shared with me the money is taken by a policeman, and I am very much afraid he will turn informer. He has been transported before for stealing poultry; he used to travel about the country mending umbrellas, and has been in prison for stealing a silver snuff-box. As I must run away, tell the person who bought the watches to get the names altered as soon as possible.



*Another Specimen.*

DEAR DICK,—I have seen the swag Chovey Bloak, who christened the Yacks quick, I gave him a double Finnip. I am now on the shallow. I have got the Yacks, so do not come it. Fight cocum. I am at the Old Padding Ken, next door to Padding Crib, I am gad-ding the hoof; but quick, be a duffer, now on the square, I want a stalsman, buttoner to nail prads. I last week worked the bulls. I have lost my Jomer. Mum now.

*Translation.*

DEAR RICHARD,—I have seen the person who bought the watches, and he altered the name in them immediately. I gave him a ten-pound note for doing it. I am now going half-naked to avoid suspicion. I have got the watches back again; therefore do not turn informer. Be wary and sly; I am stopping at the old lodging-house, next door to the boy's lodging-house; do not say a word, but be very quiet. I am going about without shoes, but shall soon turn hawker. I am at present honest. I want a partner. Will you come and join me, and then we will commence stealing horses. I last week got through a great many bad five-shilling pieces. I have left my fancy girl. Be sure you say nothing.

*Another.*

DEAR BILL,—I have seen Cheeks, you must meet us at the old mushroom faker's at 11; if not there go to the old Padding Ken, bring all your screws. The Case of a Bloak is planted to be cracked; plenty of finnips, also some long tailed ones, be mum with your jomer, fight cocum and be cocum with boozing kens, only a Bloak and Shikster in the case except a pig. Be cocum, Crabshells, a gonnoff was last week booked by a fly through Crabs. I have seen a Kidsman, who will fence two finnips, three finnips. There are no flies about.

*Translation.*

DEAR WILLIAM,—I have seen "Cheeks" (*a flash name for an accomplice*), and you must meet us at the old umbrella mender's at eleven o'clock; and if we are not there, go to the old lodging-house. Bring with you the whole of your house-breaking implements. We have arranged to break the house of a gentleman who has plenty of five-pound notes, and also some large bank-notes. Be sure you do not name this to your fancy girl. Be very careful what you do, and keep from the drinking-shops. There is nothing in the house but a gentleman and a lady and another person. Do not put on your own shoes. A brother thief did last week, and was taken by a policeman. I have seen a person who trains boys to thief, who will take all the five-pound notes, at ten pound for fifteen. There are no policemen in the neighbourhood.



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